

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

HOUSE BILL 2512

AN ACT

AMENDING SECTIONS 11-823, 37-1002, 37-1011, 37-1012, 37-1013, 37-1014, 37-1036, 37-1054, 37-1302 AND 45-101, ARIZONA REVISED STATUTES; AMENDING TITLE 45, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 45-118; AMENDING SECTIONS 45-292 AND 45-462, ARIZONA REVISED STATUTES; AMENDING TITLE 45, CHAPTER 2, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 45-465.04; AMENDING SECTIONS 45-561, 45-563, 45-563.02 AND 45-568, ARIZONA REVISED STATUTES; AMENDING TITLE 45, CHAPTER 2, ARTICLE 9, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 45-568.03, 45-568.04 AND 45-568.05; AMENDING SECTIONS 45-574, 45-575, 45-2103, 45-2106, 45-2113 AND 48-3702, ARIZONA REVISED STATUTES; AMENDING TITLE 48, CHAPTER 22, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 48-3713.04; APPROPRIATING MONIES; RELATING TO WATER PROGRAMS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 11-823, Arizona Revised Statutes, is amended to
3 read:

4 11-823. Water supply; adequacy; exemptions

5 A. To protect the public health and safety, the general regulations
6 adopted by the board pursuant to section 11-821, subsection B, if approved
7 by unanimous vote of the board of supervisors, may provide that, except as
8 provided in subsection C and subsection D, paragraph 1 of this section,
9 the board shall not approve a final plat for a subdivision composed of
10 subdivided lands, as defined in section 32-2101, located outside of an
11 active management area, as defined in section 45-402, unless one of the
12 following applies:

13 1. The director of water resources has determined that there is an
14 adequate water supply for the subdivision pursuant to section 45-108 and
15 the subdivider has included the report with the plat.

16 2. The subdivider has obtained a written commitment of water
17 service for the subdivision from a city, town or private water company
18 designated as having an adequate water supply by the director of water
19 resources pursuant to section 45-108.

20 B. If the board unanimously adopts the provision authorized by
21 subsection A of this section:

22 1. The board may include in the general regulations an exemption
23 from the provision for a subdivision that the director of water resources
24 has determined will have an inadequate water supply because the water
25 supply will be transported to the subdivision by motor vehicle or train if
26 all of the following apply:

27 (a) The board determines that there is no feasible alternative
28 water supply for the subdivision and that the transportation of water to
29 the subdivision will not constitute a significant risk to the health and
30 safety of the residents of the subdivision.

31 (b) If the water to be transported to the subdivision will be
32 withdrawn or diverted in the service area of a municipal provider as
33 defined in section 45-561, the municipal provider has consented to the
34 withdrawal or diversion.

35 (c) If the water to be transported is groundwater, the
36 transportation complies with the provisions governing the transportation
37 of groundwater in title 45, chapter 2, article 8.

38 (d) The transportation of water to the subdivision meets any
39 additional conditions imposed by the county.

40 2. The board shall promptly give written notice of the adoption of
41 the provision to the director of water resources, the director of
42 environmental quality and the state real estate commissioner. The notice
43 shall include a certified copy of the provision and any exemptions adopted
44 pursuant to paragraph 1 of this subsection. Water providers may be

1 eligible to receive monies in a water supply development fund, as
2 otherwise provided by law.

3 3. EXCEPT AS PROVIDED IN PARAGRAPH 4 OF THIS SUBSECTION, the board
4 shall not rescind the provision or amend it in a manner that is
5 inconsistent with subsection A of this section. If the board amends the
6 provision, it shall give written notice of the amendment to the director
7 of water resources, the director of environmental quality and the state
8 real estate commissioner. The board may rescind an exemption adopted
9 pursuant to paragraph 1 of this subsection. If the board rescinds the
10 exemption, it shall give written notice of the rescission to the director
11 of water resources, the director of environmental quality and the state
12 real estate commissioner, and the board shall not readopt the exemption
13 for at least five years after the rescission becomes effective.

14 4. FOR A COUNTY THAT IS NOT IN AN ACTIVE MANAGEMENT AREA:

15 (a) THE BOARD SHALL REVIEW THE PROVISION AND AFTER REVIEW MAY BY
16 UNANIMOUS VOTE AT A PUBLIC MEETING VOTE NOT TO READOPT THE PROVISION. THE
17 REVIEW SHALL OCCUR NOT MORE THAN FIVE YEARS AFTER THE EFFECTIVE DATE OF
18 THIS AMENDMENT TO THIS SECTION AND AT LEAST EVERY TEN YEARS THEREAFTER,
19 BUT NOT MORE FREQUENTLY THAN EVERY FIVE YEARS THEREAFTER.

20 (b) IF THE BOARD DOES NOT VOTE UNANIMOUSLY NOT TO READOPT THE
21 PROVISION OR IF THE BOARD AFTER REVIEW DOES NOT VOTE ON THE PROVISION, THE
22 PROVISION REMAINS IN EFFECT.

23 (c) IF THE BOARD VOTES UNANIMOUSLY NOT TO READOPT THE PROVISION,
24 THE PROVISION HAS NO FURTHER FORCE AND SUBSECTION A OF THIS SECTION DOES
25 NOT APPLY IF ALL OF THE FOLLOWING APPLY AT THE TIME OF THE VOTE:

26 (i) THE COUNTY OR THE LARGEST CITY IN THE COUNTY IS PARTICIPATING
27 IN A PROGRAM TO RECHARGE OR SUPPLEMENT THE AQUIFER UNDERLYING THE COUNTY.

28 (ii) THE COUNTY OR THE LARGEST CITY IN THE COUNTY HAS ADOPTED A
29 PLAN FOR THE REUSE OF RECLAIMED WATER. FOR THE PURPOSES OF THIS ITEM,
30 "RECLAIMED WATER" HAS THE SAME MEANING PRESCRIBED IN SECTION 49-201.

31 (iii) THE COUNTY OR THE LARGEST CITY IN THE COUNTY HAS ADOPTED A
32 RESIDENTIAL AND NONRESIDENTIAL WATER CONSERVATION PROGRAM FOR INTERIOR AND
33 EXTERIOR WATER USE.

34 (iv) IF THE LARGEST CITY IN THE COUNTY IS A COMMUNITY WATER SYSTEM
35 AS DEFINED IN SECTION 45-341, THE CITY IS IN COMPLIANCE WITH ALL
36 APPLICABLE PLANNING AND REPORTING REQUIREMENTS UNDER TITLE 45, CHAPTER 1,
37 ARTICLE 14.

38 (v) THE COUNTY OR THE LARGEST CITY IN THE COUNTY HAS ADOPTED AN
39 ORDINANCE ALLOWING ONLY THE USE OF XERISCAPE OR OTHER DROUGHT TOLERANT OR
40 LOW-WATER USE VEGETATION FOR LANDSCAPING WITHIN ANY PUBLICLY OWNED
41 RIGHT-OF-WAY OF A HIGHWAY, STREET, ROAD, SIDEWALK, CURB OR SHOULDER OR ANY
42 MEDIAN OF A HIGHWAY, STREET OR ROAD WITHIN THE COUNTY OR THE CITY, AS
43 APPLICABLE, AFTER THE EFFECTIVE DATE OF THAT LANDSCAPE ORDINANCE.

44 (vi) THE COUNTY OR THE LARGEST CITY IN THE COUNTY IS FUNDING A
45 PROGRAM TO PROVIDE REBATES FOR REPLACING LOW-EFFICIENCY PLUMBING FIXTURES

1 IN RESIDENTIAL AND NONRESIDENTIAL STRUCTURES WITHIN THE COUNTY OR CITY
2 WITH HIGH EFFICIENCY PLUMBING FIXTURES.

3 (vii) IF THE LARGEST CITY IN THE COUNTY IS A WATER PROVIDER, THE
4 CITY IS LIMITING THE AMOUNT OF LOST AND UNACCOUNTED FOR WATER IN ITS WATER
5 DISTRIBUTION SYSTEM TO NOT MORE THAN TEN PERCENT OF THE TOTAL QUANTITY OF
6 WATER THAT ENTERS THE DISTRIBUTION SYSTEM.

7 (viii) THE COUNTY OR THE LARGEST CITY IN THE COUNTY IS FUNDING A
8 PUBLIC EDUCATION PROGRAM RELATED TO WATER CONSERVATION AND HAS IDENTIFIED
9 AND IMPLEMENTED OTHER PROGRAMS TO REDUCE WATER USE WITHIN THE COUNTY OR
10 CITY, AS APPLICABLE.

11 5. THE BOARD SHALL GIVE WRITTEN NOTICE OF ANY VOTE NOT TO READOPT
12 THE PROVISION TO THE DIRECTOR OF WATER RESOURCES, THE DIRECTOR OF
13 ENVIRONMENTAL QUALITY AND THE STATE REAL ESTATE COMMISSIONER IF THE
14 PROVISION IS NO LONGER IN EFFECT AS PRESCRIBED IN PARAGRAPH 4 OF THIS
15 SUBSECTION.

16 ~~4.~~ 6. If the board approves a subdivision plat pursuant to
17 subsection A, paragraph 1 or 2 of this section, the board shall note on
18 the face of the plat that the director of water resources has reported
19 that the subdivision has an adequate water supply or that the subdivider
20 has obtained a commitment of water service for the proposed subdivision
21 from a city, town or private water company designated as having an
22 adequate water supply pursuant to section 45-108.

23 ~~5.~~ 7. If the board approves a subdivision plat pursuant to an
24 exemption authorized by paragraph 1 of this subsection or granted by the
25 director of water resources pursuant to section 45-108.02 or 45-108.03:

26 (a) The board shall give written notice of the approval to the
27 director of water resources and the director of environmental quality.

28 (b) The board shall include on the face of the plat a statement
29 that the director of water resources has determined that the water supply
30 for the subdivision is inadequate and a statement describing the exemption
31 under which the plat was approved, including a statement that the board or
32 the director of water resources, whichever applies, has determined that
33 the specific conditions of the exemption were met. If the director of
34 water resources subsequently informs the board that the subdivision is
35 being served by a water provider that has been designated by the director
36 as having an adequate water supply pursuant to section 45-108, the board
37 shall record in the county recorder's office a statement disclosing that
38 fact.

39 C. Subsection A of this section does not apply to:

40 1. A proposed subdivision that the director of water resources has
41 determined will have an inadequate water supply pursuant to section 45-108
42 if the director grants an exemption for the subdivision pursuant to
43 section 45-108.02 and the exemption has not expired or the director grants
44 an exemption pursuant to section 45-108.03.

1 2. A proposed subdivision that received final plat approval from
2 the county before the requirement for an adequate water supply became
3 effective in the county if the plat has not been materially changed since
4 it received the final plat approval. If changes were made to the plat
5 after the plat received the final plat approval, the director of water
6 resources shall determine whether the changes are material pursuant to the
7 rules adopted by the director to implement section 45-108. If the county
8 approves a plat pursuant to this paragraph and the director of water
9 resources has determined that there is an inadequate water supply for the
10 subdivision pursuant to section 45-108, the county shall note this on the
11 face of the plat.

12 D. If the subdivision is composed of subdivided lands as defined in
13 section 32-2101 outside of an active management area and the board has not
14 adopted a provision pursuant to subsection A of this section:

15 1. If the director of water resources has determined that there is
16 an adequate water supply for the subdivision pursuant to section 45-108 or
17 if the subdivider has obtained a written commitment of water service for
18 the subdivision from a city, town or private water company designated as
19 having an adequate water supply by the director of water resources
20 pursuant to section 45-108, the board shall note this on the face of the
21 plat if the plat is approved.

22 2. If the director of water resources has determined that there is
23 an inadequate water supply for the subdivision pursuant to section 45-108,
24 the board shall note this on the face of the plat if the plat is approved.

25 Sec. 2. Section 37-1002, Arizona Revised Statutes, is amended to
26 read:

27 37-1002. Definitions

28 In this chapter, unless the context otherwise requires:

29 ~~1. "Agency of the state" includes the government of the state and~~
30 ~~any subdivision, agency or instrumentality, corporate or otherwise, of the~~
31 ~~state government.~~

32 ~~2.~~ 1. "Agricultural lands" means irrigated ~~farm lands~~ FARMLANDS or
33 dry ~~farm lands~~ FARMLANDS THAT ARE devoted to the purpose of agriculture.

34 ~~3.~~ 2. "Commissioner" or "state natural resource conservation
35 commissioner" means the state ~~land commissioner~~ FORESTER.

36 ~~4.~~ 3. "Department" means the ~~state land department~~ ARIZONA
37 DEPARTMENT OF FORESTRY AND FIRE MANAGEMENT.

38 ~~5.~~ 4. "District" means a natural resource conservation district
39 THAT IS organized in accordance with ~~the provisions of~~ this chapter.

40 ~~6.~~ 5. "District cooperater" means any person who has entered into
41 a cooperative agreement with a natural resource conservation district for
42 the purpose of protecting, conserving and practicing wise use of the
43 natural resources under ~~his~~ THAT PERSON'S control.

44 ~~7.~~ 6. "Due notice" means notice THAT IS published at least twice
45 with an interval of at least six days between the two publication dates,

1 in a newspaper of general circulation within the area affected, or if
2 there is no newspaper of general circulation within the area affected, in
3 a newspaper of general circulation in the county in which the area is
4 located.

5 ~~8.~~ 7. "Government" or "governmental" includes the government of
6 ~~the~~ THIS state, the government of the United States, and any subdivision,
7 agency or instrumentality, corporate or otherwise, of either of them.

8 ~~9.~~ 8. "Irrigation district" means an irrigation district, drainage
9 district, water conservation district, ~~OR~~ agricultural improvement
10 district, ~~and, in addition thereto,~~ includes any district, political
11 subdivision, government agency, canal company, association, corporation or
12 instrumentality of ~~the~~ THIS state, having territorial boundaries and
13 created or organized for the purpose of furnishing irrigation water for
14 lands in ~~the~~ THIS state.

15 ~~10.~~ 9. "Landowner" or "owner of land" means any person, firm or
16 corporation, including ~~the~~ THIS state, holding title to any land lying
17 within a district organized or proposed to be organized under ~~the~~
18 ~~provisions of~~ this chapter, and includes a buyer on contract who is the
19 occupant of land. For the purposes of this chapter, a holder of a
20 certificate of purchase or lease from the state shall be considered
21 the ~~"landowner"~~ or ~~"owner of land"~~.

22 ~~11.~~ 10. "Nominating petition" means a petition to nominate
23 candidates for the office of supervisor.

24 ~~12.~~ 11. "Petition" means a petition for the creation or for the
25 dissolution of a district.

26 ~~13.~~ 12. "Qualified elector" means a person who is a district
27 cooperater and a qualified elector of ~~the~~ THIS state.

28 ~~14.~~ 13. ~~"Range lands RANGELAND"~~ means lands other than agricultural
29 lands ~~and~~ THAT ARE devoted principally to the purpose of grazing
30 livestock.

31 ~~15.~~ 14. "Supervisor" means a member of the governing body of a
32 district, elected or appointed in accordance with ~~the provisions of~~ this
33 chapter.

34 ~~16.~~ 15. "United States" or "agencies of the United States" includes
35 the United States, the United States department of agriculture and any
36 other agency or instrumentality, corporate or otherwise, of the United
37 States.

38 Sec. 3. Section 37-1011, Arizona Revised Statutes, is amended to
39 read:

40 37-1011. Division of natural resource conservation

41 For the purpose of administering this chapter, ~~there shall be a~~
42 ~~division of the state land department which shall be known as~~ the division
43 of natural resource conservation IS ESTABLISHED IN THE ARIZONA DEPARTMENT
44 OF FORESTRY AND FIRE MANAGEMENT under the authority and direction of the
45 state natural resource conservation commissioner.

1 Sec. 4. Section 37-1012, Arizona Revised Statutes, is amended to
2 read:

3 37-1012. State natural resource conservation commissioner

4 A. The state ~~land commissioner shall be~~ FORESTER IS THE state
5 natural resource conservation commissioner. ~~He~~ AND shall serve as such
6 without additional compensation.

7 B. The commissioner may appoint an administrative officer of the
8 division of natural resource conservation, a secretary and ~~such~~ other
9 assistants as may be required, assign their duties, define their powers
10 and determine the amount of bond required of any assistant entrusted with
11 funds or property. The compensation of all ~~such~~ assistants shall be as
12 determined pursuant to section 38-611.

13 C. The commissioner shall adopt a seal, which shall be judicially
14 noticed, and shall hold ~~such~~ public hearings, provide for the keeping of a
15 record of all proceedings and annual records of district operations,
16 ~~promulgate such~~ ADOPT orders, ~~AND~~ rules ~~and regulations~~ and perform such
17 other acts as are necessary to carry out ~~the provisions of~~ this chapter.

18 Sec. 5. Section 37-1013, Arizona Revised Statutes, is amended to
19 read:

20 37-1013. Powers and duties of commissioner

21 A. The state natural resource conservation commissioner shall:

22 1. Offer appropriate assistance to the supervisors of districts in
23 carrying out their powers and programs.

24 2. Keep the supervisors of each district informed of the activities
25 and experiences of other districts, ~~and~~ facilitate cooperation and
26 interchange of advice and experience between districts.

27 3. Coordinate the programs of the several districts insofar as
28 possible by advice and consultation.

29 4. Require the supervisors of each district to file with the
30 commissioner annually any audits and the records of the operations of the
31 district for the preceding year in the form and detail as the commissioner
32 prescribes.

33 5. Secure the cooperation and assistance of the United States, its
34 agencies and agencies of this state, in the work of districts as local
35 units of state government with special expertise concerning land, soil,
36 water and natural resources management within the boundaries of the
37 district, as the commissioner deems for the best interest of the state.

38 6. Disseminate information throughout the state concerning the
39 activities and program of districts.

40 7. Provide staff support to the Arizona water protection fund
41 commission established by title 45, chapter 12 and provide administrative
42 assistance to natural resource conservation districts for compliance with
43 the duties for districts pursuant to title 45, chapter 12.

1 8. PUBLICLY RECOGNIZE WATER CONSERVATION MEASURES OR WATER
2 CONSERVATION PROJECTS IN THIS STATE, INCLUDING WATERSHED IMPROVEMENT OR
3 PROTECTION PROGRAMS.

4 9. PROMOTE TO THE PUBLIC THIS STATE'S WATER-RELATED ADVANCEMENTS
5 AND THEIR EFFECT ON WATERSHEDS, FOREST HEALTH, MULTIPLE USES AND
6 STORMWATER RUNOFF PROTECTION PROGRAMS.

7 B. The commissioner may remove a district supervisor from office if
8 the commissioner determines, after reasonable notice and an impartial
9 hearing, that the supervisor is guilty of misfeasance, malfeasance or
10 nonfeasance in office. For the purposes of this subsection, "nonfeasance"
11 includes the failure to attend three consecutive meetings of district
12 supervisors without reasonable excuse.

13 Sec. 6. Section 37-1014, Arizona Revised Statutes, is amended to
14 read:

15 37-1014. State financial assistance; application; criteria

16 A. The commissioner shall include in the annual ~~state-land~~
17 department budget request a sum of not more than forty thousand dollars
18 for each district and sixty thousand dollars for each education center for
19 distribution by the commissioner to those natural resource conservation
20 districts that have applied for, have met the criteria for and have been
21 approved for receiving state financial assistance, as provided in this
22 section.

23 B. Any district or education center desiring to receive state
24 financial assistance for the next ensuing fiscal year shall apply to the
25 commissioner not later than June 20, on a form supplied by the division of
26 natural resource conservation. Each application shall include:

27 1. The number of acres of land lying within the district.

28 2. The extent of conservation programs or education center programs
29 proposed to be undertaken during the fiscal year for which the financial
30 assistance is being requested.

31 3. Any audits that are requested by the commissioner.

32 C. On receipt of the application, the commissioner shall determine
33 whether ~~or not~~ such ~~funds~~ MONIES for the district or education center will
34 be included in the budget request for the ~~state-land~~ department and shall
35 promptly notify the district OR EDUCATION CENTER of that determination.

36 Sec. 7. Section 37-1036, Arizona Revised Statutes, is amended to
37 read:

38 37-1036. Proceedings to organize district; certificate of
39 organization

40 A. A district shall be organized and shall be a body corporate ~~upon~~
41 ON taking the following steps:

42 1. The supervisors elected as provided in section 37-1035 shall
43 present to the secretary of state an application, signed and acknowledged
44 by each supervisor, setting forth:

1 (a) That a petition for the creation of the district was approved
2 by the commissioner pursuant to ~~the provisions of~~ this chapter.

3 (b) The name and official residence of each supervisor, ~~and~~ a
4 certified copy of their notification of election.

5 (c) The name proposed for the district.

6 (d) The location of the proposed office of the supervisors of the
7 district.

8 2. The application shall be accompanied by a certificate of the
9 commissioner ~~which shall set~~ SETTING forth:

10 (a) The boundaries of the district as determined by ~~him~~ THE
11 COMMISSIONER.

12 (b) That a petition was filed, notice WAS issued and a hearing WAS
13 held as prescribed by law.

14 (c) That for a district to function in the proposed territory was
15 determined by the commissioner to be in the public interest.

16 (d) That notice was given and a referendum on the question of the
17 creation of the district and an election of supervisors were held.

18 (e) That the results of the referendum showed not less than
19 sixty-five ~~per cent~~ PERCENT of the votes cast, representing not less than
20 fifty ~~per cent~~ PERCENT of the owners of land, to be in favor of the
21 creation of the district.

22 (f) That the supervisors signing the application are the duly
23 elected supervisors of the district.

24 3. The secretary of state shall examine the application and
25 statement and, if ~~he~~ THE SECRETARY OF STATE finds that the name proposed
26 for the district is not identical with or so similar to that of any other
27 district as to lead to confusion, ~~he~~ THE SECRETARY OF STATE shall record
28 them. If the name proposed is identical with or so similar to another
29 district as to lead to confusion, ~~he~~ THE SECRETARY OF STATE shall certify
30 that fact to the commissioner, who shall submit another name. ~~Upon~~ ON
31 receipt of a new name, free from defects, the secretary of state shall
32 record the application and statement.

33 B. The secretary of state shall issue to the supervisors a
34 certificate, under the seal of the state, certifying the organization of
35 the district, ~~and~~ SHALL record the certificate with the application and
36 statement. The district ~~shall include~~ INCLUDES the territory as
37 determined by the commissioner, ~~but it shall~~ DOES not include any area
38 within the boundaries of another district, ~~nor shall it~~ AND DOES NOT
39 include any area, land or property of or lands held under certificate of
40 purchase or lease from ~~the~~ THIS state by any person or persons, ~~which~~ IF
41 THE area, land, property or leaseholds lie within the geographical limits
42 of such A district but the owners or holders of certificates of purchase
43 or lessees of which do not desire to ~~come within~~ JOIN the district.

44 C. In any action or proceeding involving the validity or
45 enforcement of, or relating to, any contract, proceeding or action of the

1 district, the district ~~shall be~~ IS deemed to ~~have been~~ BE established in
2 accordance with ~~the provisions of~~ this chapter ~~upon~~ ON proof of the
3 issuance of the certificate of organization by the secretary of state. A
4 copy of the certificate certified by the secretary of state ~~shall be~~ IS
5 admissible in evidence in any action or proceeding, ~~and shall be~~ IS proof
6 of the filing and contents thereof. In like manner, any district
7 combined, ~~and consolidated with an adjacent district or districts,~~ and
8 reorganized and renamed ~~prior to the date of this section shall be~~ BEFORE
9 JUNE 20, 1968 IS deemed to ~~have been~~ BE established ~~upon~~ ON proof of
10 certifications and official maps filed with the secretary of state by the
11 division of natural resource conservation of the ~~state land~~ department.

12 D. The commissioner shall appoint two supervisors from a panel of
13 candidates compiled by the elected supervisors and presented by the
14 temporary chairman of the elected supervisors. Candidates for the office
15 of appointed supervisors shall be qualified electors of the state.
16 Appointed supervisors shall continue to serve until May 31 of the next
17 even-numbered year or until their successors are otherwise appointed.

18 Sec. 8. Section 37-1054, Arizona Revised Statutes, is amended to
19 read:

20 37-1054. Powers of district

21 A. This state recognizes the special expertise of the districts in
22 the fields of land, soil, water and natural resources management within
23 the boundaries of the district. A district is empowered to:

24 1. Conduct surveys, investigations and research relating to the
25 character of the soil, soil erosion prevention within a farm or ranch,
26 methods of cultivation, farm and range practices, seeding, eradication of
27 noxious growths and any other measures that will aid farm and range
28 operations, disseminate information pertaining thereto, and carry on
29 research programs with or without the cooperation of this state or its
30 agencies or the United States or its agencies.

31 2. Conduct demonstration projects within the district on lands
32 owned or controlled by the state or any of its agencies with the consent
33 and cooperation of the agency having jurisdiction of the land, and on any
34 other lands within the district on obtaining the consent of the landowner
35 or the necessary rights or interests in the land, in order to demonstrate
36 by example the means, methods and measures by which water, soil and soil
37 resources may be conserved and soil erosion and soil washing may be
38 prevented and controlled.

39 3. Cooperate and enter into agreements with a landowner, an
40 operator or any agency or subdivision of the state or federal government
41 to carry on programs of watershed improvement, soil erosion prevention,
42 methods of cultivation, cropping practices, land leveling and improvement
43 on agricultural lands, and programs limited to methods of proper range
44 use, reseeding and the eradication of noxious growth on grazing lands, all

1 within the limits of an individual farm or ranch and subject to the
2 conditions the supervisors deem necessary.

3 4. Acquire, by purchase, exchange, lease or otherwise, any
4 property, real or personal, or rights or interest in any property,
5 maintain, administer and improve any properties acquired, receive income
6 from any property or right or interest in property and expend it in
7 carrying out the purposes of this chapter, and sell, lease or otherwise
8 dispose of any property or interest in property in furtherance of the
9 purposes of this chapter.

10 5. Make available, on the terms it prescribes to landowners within
11 the district, agricultural and engineering machinery and equipment,
12 fertilizer, seed and other material or equipment as will assist the
13 landowners to carry on operations on their lands for the purposes and
14 programs authorized by this chapter.

15 6. Develop, publish and bring to the attention of landowners within
16 the district comprehensive plans for the conservation of soil and water
17 resources within the district that specify in such detail as may be
18 feasible the acts, procedures, performances and avoidances necessary or
19 desirable for the effectuation of the plans.

20 7. Apply for, receive and spend monies from the Arizona water
21 protection fund pursuant to title 45, chapter 12 to be used in individual
22 districts or in cooperation with other districts, persons, cities, towns,
23 counties, special districts and Indian communities for projects consistent
24 with title 45, chapter 12.

25 8. Employ agents, engineers, attorneys or other employees not
26 readily available from existing state agencies.

27 9. Sue and be sued in the name of the district, have a seal, which
28 shall be judicially noticed, have perpetual succession unless terminated
29 as provided in this chapter, make and execute contracts and other
30 instruments necessary or convenient to the exercise of its powers and
31 make, amend and repeal rules not inconsistent with this chapter to carry
32 into effect its purposes and powers.

33 10. Accept donations, gifts and contributions in money, services,
34 materials or otherwise, and use or expend them in carrying on its
35 operations.

36 11. Organize and establish an education center to increase the
37 knowledge of natural resources in this state through the following
38 methods:

39 (a) Offering technical guidance and training to agricultural
40 producers.

41 (b) Publishing scholarly materials.

42 (c) Providing educational and training opportunities, both inside
43 and outside of the district.

44 (d) Conducting or sponsoring scientific studies that affect natural
45 resources in this state.

1 B. A provision of law with respect to the acquisition, operation or
2 disposition of property by other public bodies shall not be applicable to
3 a district organized under this chapter unless specifically stated
4 therein.

5 C. After the formation of any district under this chapter, all
6 participation thereunder shall be voluntary, notwithstanding any provision
7 of this chapter to the contrary.

8 D. A district may send to the Arizona water protection fund
9 commission established by title 45, chapter 12 written recommendations for
10 geographic areas to be emphasized, issues of concern and measures to
11 implement title 45, chapter 12. A district that sends written
12 recommendations to the commission shall request information from at least
13 the following:

14 1. The director of the department of water resources, **THE STATE**
15 **FORESTER** and the state land commissioner.

16 2. The federal and state fish, wildlife, recreation and natural
17 resource agencies.

18 3. County and municipal entities.

19 4. The public.

20 E. The district shall develop procedures to ensure adequate
21 participation in the public involvement process prescribed by subsection D
22 of this section.

23 Sec. 9. Section 37-1302, Arizona Revised Statutes, is amended to
24 read:

25 **37-1302. Powers and duties of state forester; rules;**
26 **legislative presentation; acceptance of federal**
27 **law**

28 A. The state forester is designated as the agent of ~~the~~ **THIS** state
29 ~~of Arizona~~ and shall administer this chapter. The state forester shall:

30 1. Exercise and perform all powers and duties vested in or imposed
31 on the Arizona department of forestry and fire management.

32 2. Adopt rules necessary to discharge the powers and duties of the
33 Arizona department of forestry and fire management, including rules that
34 create efficiencies, protect the public health and safety and prescribe
35 budgetary obligations.

36 3. Subject to title 41, chapter 4, article 4, appoint an assistant
37 director to the office of the state fire marshal, a state fire training
38 officer and a state fire resource coordinator, all of whom serve at the
39 pleasure of the state forester.

40 4. Subject to title 41, chapter 4, article 4, employ, determine the
41 terms and conditions of employment of and prescribe the duties and powers
42 of administrative, professional, technical, secretarial, clerical and
43 other persons as may be necessary in the performance of the Arizona
44 department of forestry and fire management's duties. The compensation of
45 department employees shall be as determined pursuant to section 38-611.

1 5. Contract for the services of outside advisors, consultants and
2 aides as may be reasonably necessary.

3 6. Perform all management and administrative functions assigned or
4 delegated to this state by the United States relating to forestry and
5 financial assistance and grants relating to forestry.

6 7. Identify sources of information relating to forest management,
7 including wildfire prevention, mitigation, suppression and recovery and
8 administrative and judicial appeals and litigation with respect to timber
9 sales and forest thinning projects in this state, and develop procedures
10 for compiling and distributing that information.

11 8. Take necessary action to maximize state fire assistance grants,
12 including establishing timelines for using grant monies and reallocating
13 lapsed grant monies to other projects.

14 9. Conduct education and outreach in forest communities by
15 explaining the wildfire threat to private property caused by the lack of
16 timber harvesting, forest thinning, land management and watershed
17 protection and enhancement.

18 10. Monitor and conduct forestry projects and wildfire prevention,
19 mitigation and suppression activities.

20 11. Assist in the development of the forestry products industry in
21 this state.

22 12. Intervene on behalf of this state and its citizens in
23 administrative and judicial appeals and litigation that challenge
24 governmental efforts supported by the state forester if the state forester
25 determines that intervention is in the best interests of this state.

26 13. Annually develop and implement a comprehensive statewide
27 wildfire response plan for the deployment of state, county, municipal,
28 fire district, volunteer fire association and private fire service
29 provider contract resources to wildfire suppression activities. The
30 statewide wildfire response plan shall take into account anticipated fire
31 conditions and fire severity and may include repositioning resources as
32 necessary. The state forester shall consult with federal land management
33 firefighting agencies, state and county emergency agencies, municipal fire
34 departments, fire districts, statewide fire district and statewide fire
35 chiefs associations, volunteer fire departments and private fire
36 contractors in the development of the comprehensive statewide wildfire
37 response plan, the implementation of standards for training and
38 certification for all classes of wildland fire and hazard personnel and
39 the implementation of standards for wildland fire apparatus and equipment
40 that are deployed under cooperative agreements with the state forester.

41 14. Provide necessary oversight to ensure standardized training and
42 certification for all classifications of firefighters to be deployed to
43 any incident.

1 15. Develop recommendations for minimum standards for safeguarding
2 life and property from wildland fires and fire hazards, preventing
3 wildland fires and alleviating fire hazards.

4 16. Develop recommendations for minimum standards for the storage,
5 sale, distribution and use of dangerous chemicals, combustibles, flammable
6 liquids, explosives and radioactive materials in wildland-urban interface
7 areas.

8 17. Consult with the department of public safety, the department of
9 emergency and military affairs and local governments regarding the
10 establishment of fire evacuation routes and community alert systems.

11 18. Make recommendations for minimum standards for the creation of
12 defensible spaces in and around wildland-urban interface areas as
13 authorized by existing county and municipal laws and ordinances.

14 19. SERVE AS THE STATE NATURAL RESOURCE CONSERVATION COMMISSIONER
15 PURSUANT TO SECTION 37-1012.

16 B. During the first regular session of each legislature, the state
17 forester shall present information to the legislative committees with
18 jurisdiction over forestry issues. The state forester shall collaborate
19 with, and invite the participation of, relevant state, federal and local
20 governmental officers and agencies. A written report is not required, but
21 the presentation shall include information concerning:

22 1. Forestry management, including the current conditions of the
23 forests in this state on federal, state and private property as affected
24 by federal, state and local public policies, climatic conditions, wildfire
25 hazards, pest infestations, overgrowth and overgrowth control policies and
26 methods and the effects of current federal policy on forest management and
27 impacts on forest land management.

28 2. The wildland-urban interface, including the effects of county
29 and municipal zoning policies and wildfire hazards on public and private
30 property.

31 3. Wildfire emergency management and all hazard response issues,
32 including:

33 (a) Intergovernmental and interagency primacy, cooperation,
34 coordination, roles and training of federal, state and local forestry,
35 firefighting and law enforcement agencies.

36 (b) Channels and methods of communicating emergency information to
37 the public.

38 (c) The roles of governmental and nongovernmental disaster relief
39 agencies and organizations.

40 (d) The level of federal, state and local emergency funding.

41 C. The state forester may:

42 1. Furnish technical advice to the people of this state on forestry
43 and land management matters.

1 2. Do all other acts necessary to take advantage of and carry out
2 the provisions of the act of Congress described in subsection D of this
3 section.

4 D. This state accepts the provisions of the cooperative forestry
5 assistance act of 1978 (P.L. 95-313; 92 Stat. 365; 16 United States Code
6 chapter 41) providing for federal forestry assistance programs to states.

7 Sec. 10. Section 45-101, Arizona Revised Statutes, is amended to
8 read:

9 45-101. Definitions

10 In this title, unless the context otherwise requires:

11 1. "Appropriator" means the person or persons initiating or
12 perfecting the right to use appropriable water based on state law, or the
13 person's successor or successors in interest.

14 2. "Department" means the department of water resources.

15 3. "Director" means the director of water resources, who is also
16 the director of the department.

17 4. "Effluent" **OR, FOR THE PURPOSES OF DEPARTMENTAL INFORMATIONAL**
18 **MATERIALS ONLY, "RECYCLED WATER"** means water that has been collected in a
19 sanitary sewer for subsequent treatment in a facility that is regulated
20 pursuant to title 49, chapter 2. Such water remains effluent until it
21 acquires the characteristics of groundwater or surface water.

22 5. "Groundwater" means water under the surface of the earth
23 regardless of the geologic structure in which it is standing or
24 moving. Groundwater does not include water flowing in underground streams
25 with ascertainable beds and banks.

26 6. "Interstate stream" means any stream constituting or flowing
27 along the exterior boundaries of this state, and any tributary originating
28 in another state or foreign country and flowing into or through this
29 state.

30 7. "Riparian area" means a geographically delineated area with
31 distinct resource values, ~~that~~ that is characterized by deep-rooted plant
32 species that depend on having roots in the water table or its capillary
33 zone and that occurs within or adjacent to a natural perennial or
34 intermittent stream channel or within or adjacent to a lake, pond or marsh
35 bed maintained primarily by natural water sources. Riparian area does not
36 include areas in or adjacent to ephemeral stream channels, artificially
37 created stockponds, man-made storage reservoirs constructed primarily for
38 conservation or regulatory storage, municipal and industrial ponds or
39 man-made water transportation, distribution, off-stream storage and
40 collection systems.

41 8. "Sanitary sewer" means any pipe or other enclosed conduit that
42 carries, among other substances, any water-carried wastes from the human
43 body from residences, commercial buildings, industrial plants or
44 institutions.

1 9. "Surface water" means the waters of all sources, flowing in
2 streams, canyons, ravines or other natural channels, or in definite
3 underground channels, whether perennial or intermittent, floodwater,
4 wastewater or surplus water, and of lakes, ponds and springs on the
5 surface. For the purposes of administering this title, surface water is
6 deemed to include central Arizona project water.

7 Sec. 11. Title 45, chapter 1, article 1, Arizona Revised Statutes,
8 is amended by adding section 45-118, to read:

9 45-118. Desalination action plan; report

10 A. THE DIRECTOR SHALL PREPARE A DESALINATION ACTION PLAN THAT
11 INCLUDES ALL THE FOLLOWING:

12 1. AN IDENTIFICATION OF AREAS WITHIN THIS STATE WHERE BRACKISH
13 GROUNDWATER EXISTS IN SIGNIFICANT AMOUNTS.

14 2. AN ESTIMATE OF THE COST TO TREAT AND DELIVER THE BRACKISH
15 GROUNDWATER FOR AN ECONOMICALLY VIABLE USE.

16 3. AN IDENTIFICATION OF AREAS OF THIS STATE THAT WOULD BENEFIT FROM
17 THE USE OF THE TREATED BRACKISH GROUNDWATER.

18 4. AN IDENTIFICATION OF POTENTIAL FUNDING SOURCES FOR THE TREATMENT
19 AND DELIVERY OF THE BRACKISH GROUNDWATER.

20 5. AN EVALUATION OF THE FEASIBILITY AND COST OF DISPOSAL OF THE
21 BRINE PRODUCT THAT RESULTS FROM TREATING BRACKISH GROUNDWATER.

22 6. AN EVALUATION AND ANALYSIS OF ISSUES RELATED TO THE SOURCES OF
23 THE BRACKISH GROUNDWATER IDENTIFIED IN THE DESALINATION ACTION PLAN,
24 INCLUDING ANY POTENTIAL IMPACTS THAT MIGHT OCCUR TO THE WATER SUPPLIES OF
25 WATER USERS IN THE AREA OF THE BRACKISH GROUNDWATER IF THE GROUNDWATER IS
26 WITHDRAWN AND TREATED FOR USE.

27 B. A DESALINATION ACTION PLAN MAY ALSO IDENTIFY AND EVALUATE
28 POTENTIAL BINATIONAL AGREEMENTS OR PROJECTS RELATED TO THE TREATMENT OF
29 BRACKISH GROUNDWATER OR SEA WATER USING THE CRITERIA PRESCRIBED IN
30 SUBSECTION A OF THIS SECTION.

31 C. IF THE DIRECTOR DETERMINES THERE IS SIGNIFICANT BRACKISH WATER
32 UNDERGROUND IN A COUNTY ADJACENT TO THE COLORADO RIVER, THE DIRECTOR SHALL
33 INCLUDE IN THE DESALINATION ACTION PLAN AN ANALYSIS AND EVALUATION OF THE
34 SOURCE OF THE UNDERGROUND WATER, WHETHER THE WATER IS BEING USED AND, IF
35 THE WATER IS BEING USED, THE PURPOSES FOR WHICH IT IS BEING USED. IF THE
36 DIRECTOR CONCLUDES THAT THE LIKELY SOURCE OF THE WATER IS COLORADO RIVER
37 WATER, THE DIRECTOR SHALL NOT ADDRESS THAT WATER IN THE DESALINATION
38 ACTION PLAN. ANY CONCLUSION MADE BY THE DIRECTOR AS TO THE SOURCE OF THE
39 WATER IS NOT BINDING FOR ANY PURPOSE AND DOES NOT CREATE A PRESUMPTION OF
40 THE LEGAL CHARACTER OF THE WATER IN ANY ADMINISTRATIVE OR JUDICIAL
41 PROCEEDING.

42 D. THE DIRECTOR SHALL SUBMIT THE INITIAL DESALINATION ACTION PLAN
43 ON OR BEFORE SEPTEMBER 30, 2019 TO THE GOVERNOR, THE PRESIDENT OF THE
44 SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, THE MEMBERS OF THE
45 SENATE NATURAL RESOURCES, ENERGY AND WATER COMMITTEE, OR ITS SUCCESSOR

1 COMMITTEE, AND THE MEMBERS OF THE HOUSE OF REPRESENTATIVES ENERGY,
2 ENVIRONMENT AND NATURAL RESOURCES COMMITTEE, OR ITS SUCCESSOR COMMITTEE,
3 AND SHALL PROVIDE A COPY OF THE REPORT TO THE SECRETARY OF STATE. THE
4 DIRECTOR SHALL SUBMIT SUBSEQUENT REPORTS ON THE DESALINATION ACTION PLAN
5 AND ITS RESULTS BY DECEMBER 31 EVERY TWO YEARS THERE-AFTER.

6 Sec. 12. Section 45-292, Arizona Revised Statutes, is amended to
7 read:

8 45-292. Approval required to transport water out of state;
9 application; fee; criteria; hearing

10 A. A person may withdraw, or divert, and transport water from this
11 state for a reasonable and beneficial use in another state if approved by
12 the director pursuant to this article AND ON APPROVAL OF THE LEGISLATURE
13 AS PRESCRIBED BY THIS SECTION. A person shall not transport water from
14 this state WHETHER SURFACE WATER, GROUNDWATER OR OTHER WATER unless
15 approved by the director AND THE LEGISLATURE, but this article does not
16 apply to or prohibit transporting water from this state as required by
17 interstate compact, federal law or international treaty.

18 B. An application to transport water from this state for use in
19 another state shall be filed with the director, including a fee
20 established by the director by rule. In establishing a fee by rule, the
21 director may consider factors including the amount of time likely to be
22 expended in processing the application, the amount of preexisting
23 hydrological information available, if any, and the complexity of the
24 application. The application shall include:

- 25 1. The name and address of the applicant's statutory agent in this
26 state for service of process and other legal notices.
- 27 2. The legal basis for acquiring the water to be transported.
- 28 3. The purpose for which the water will be used.
- 29 4. The annual amount of water in acre-feet for which the
30 application is made.
- 31 5. The proposed duration of the permit, not to exceed fifty years
32 with an option to renew.
- 33 6. Studies satisfactory to the director of the probable hydrologic
34 impact on the area from which the water is proposed to be transported.
- 35 7. Any other information ~~which~~ THAT the director may require.

36 C. The director shall approve or reject the application. If the
37 director approves the application, the director may prescribe terms and
38 conditions for the approval. In determining whether to approve the
39 application the director shall consider:

- 40 1. Whether the proposed action would be consistent with
41 conservation of water, including any applicable management goals and
42 plans.
- 43 2. Potential harm to the public welfare of the citizens of this
44 state.

1 3. The supply of water to this state and current and future water
2 demands in this state in general and the proposed source area in
3 particular.

4 4. The feasibility of intrastate transportation of the water that
5 is the subject of the application to alleviate water shortages in this
6 state.

7 5. The availability of alternative sources of water in the other
8 state.

9 6. The demands placed on the applicant's supply in the other state.

10 7. Whether the proposed action is prohibited or affected by other
11 law, including sections 45-165 and 45-172 and chapter 2 of this title.

12 D. IF THE DIRECTOR APPROVES THE APPLICATION, THE DIRECTOR SHALL
13 NOTIFY THE LEGISLATURE OF THE DIRECTOR'S APPROVAL. THE LEGISLATURE SHALL
14 CONSIDER THE PROPOSED ACTION AND MAY APPROVE THE PROPOSED ACTION BY
15 LEGISLATIVE ENACTMENT, APPROVED BY THE GOVERNOR. IF THE LEGISLATURE FAILS
16 TO PASS A LEGISLATIVE ENACTMENT OR THE LEGISLATIVE ENACTMENT IS NOT
17 APPROVED BY THE GOVERNOR, THE APPLICATION IS DENIED AND SHALL NOT PROCEED.

18 ~~E.~~ E. This article does not authorize and the director shall not
19 approve transporting from this state water allocated to this state by
20 federal law or interstate compact.

21 ~~F.~~ F. An administrative hearing shall be held on the application,
22 and the director shall give notice of the hearing by publication once a
23 week for three consecutive weeks in a newspaper of general circulation in
24 the county or counties from which the applicant proposes to transport the
25 water. The hearing shall be conducted in the area from which water is
26 proposed to be transported. Any interested person, including the
27 department, may appear and give oral or written testimony on all issues
28 involved.

29 ~~F.~~ G. Section 45-114, subsections A and B govern administrative
30 proceedings, rehearing or review and judicial review of final decisions of
31 the director under this section.

32 ~~G.~~ H. The director shall deposit, pursuant to sections 35-146 and
33 35-147, all fees received under this section in the water resources fund
34 established by section 45-117.

35 Sec. 13. Section 45-462, Arizona Revised Statutes, is amended to
36 read:

37 45-462. Grandfathered groundwater rights; persons included;
38 certificate of exemption amount is legal use;
39 extinguishment

40 A. In an active management area, a person who was legally
41 withdrawing and using groundwater as of the date of the designation of the
42 active management area or who owns land legally entitled to be irrigated
43 with groundwater as determined pursuant to this article has the right to
44 withdraw or receive and use groundwater as determined by the director
45 pursuant to this article.

1 B. For purposes of determining grandfathered rights pursuant to
2 this article, a groundwater use shall not be determined to be illegal
3 merely because the groundwater legally withdrawn is or has been
4 transported.

5 C. The amount of groundwater use described by an ~~applicaton~~
6 APPLICATION for a certificate of exemption is recognized as a legal use
7 for purposes of determining grandfathered rights pursuant to section
8 45-464, subject to any modification as a result of a finding on appeal of
9 a factual mistake by the state land department or Arizona water commission
10 in computing the amount of the authorized withdrawal.

11 D. The right to withdraw or receive and use groundwater pursuant to
12 this article is a grandfathered right. There are three categories of
13 grandfathered rights as follows:

14 1. Non-irrigation grandfathered rights associated with retired
15 irrigated land as determined pursuant to sections 45-463, 45-469 and
16 45-472.

17 2. Non-irrigation grandfathered rights not associated with retired
18 irrigated land as determined pursuant to section 45-464.

19 3. Irrigation grandfathered rights as determined pursuant to
20 section 45-465.

21 E. NOTWITHSTANDING ANY OTHER STATUTE OR RULE, IN THE PINAL ACTIVE
22 MANAGEMENT AREA UNTIL DECEMBER 31, 2021:

23 1. THE DIRECTOR SHALL CALCULATE THE INITIAL VOLUME OF
24 EXTINGUISHMENT CREDITS FOR THE EXTINGUISHMENT OF A GRANDFATHERED RIGHT AS
25 FOLLOWS:

26 (a) FOR THE EXTINGUISHMENT OF A TYPE 2 NON-IRRIGATION GRANDFATHERED
27 RIGHT, MULTIPLY THE NUMBER OF ACRE-FEET INDICATED ON THE CERTIFICATE OF
28 GRANDFATHERED RIGHT BY ONE HUNDRED.

29 (b) FOR THE EXTINGUISHMENT OF ALL OR PART OF AN IRRIGATION
30 GRANDFATHERED RIGHT, OR ALL OR PART OF A TYPE 1 NON-IRRIGATION
31 GRANDFATHERED RIGHT, MULTIPLY 1.5 ACRE-FEET BY THE NUMBER OF IRRIGATION
32 ACRES ASSOCIATED WITH THE EXTINGUISHED IRRIGATION GRANDFATHERED RIGHT OR
33 THE NUMBER OF ACRES TO WHICH THE EXTINGUISHED TYPE 1 NON-IRRIGATION
34 GRANDFATHERED RIGHT IS APPURTENANT, AND THEN MULTIPLY THAT PRODUCT BY ONE
35 HUNDRED, EXCEPT THAT:

36 (i) IF ONLY A PORTION OF AN IRRIGATION GRANDFATHERED RIGHT OR A
37 TYPE 1 NON-IRRIGATION GRANDFATHERED RIGHT IS EXTINGUISHED, ONLY THOSE
38 ACRES ASSOCIATED WITH THE PORTION OF THE RIGHT THAT IS EXTINGUISHED SHALL
39 BE INCLUDED IN THE CALCULATION.

40 (ii) IF AN EXTINGUISHED IRRIGATION GRANDFATHERED RIGHT HAS A DEBIT
41 BALANCE IN THE CORRESPONDING FLEXIBILITY ACCOUNT ESTABLISHED PURSUANT TO
42 SECTION 45-467, THE DIRECTOR SHALL SUBTRACT THE AMOUNT OF THE DEBIT FROM
43 THE AMOUNT OF THE EXTINGUISHMENT CREDITS.

44 2. FOR GRANDFATHERED RIGHTS EXTINGUISHED FROM AND AFTER AUGUST 31,
45 2018, IF THE AMOUNT OF THE EXTINGUISHMENT CREDITS REMAINING UNUSED ON THE

1 SIXTH, ELEVENTH, SIXTEENTH OR TWENTY-FIRST ANNIVERSARY OF THE DATE OF
2 EXTINGUISHMENT IS GREATER THAN AN AMOUNT CALCULATED BY MULTIPLYING THE
3 INITIAL VOLUME OF EXTINGUISHMENT CREDITS BY THE APPLICABLE PERCENTAGE
4 ESTABLISHED IN THIS SUBSECTION, THE AMOUNT OF UNUSED CREDITS SHALL BE
5 REDUCED TO AN AMOUNT CALCULATED BY MULTIPLYING THE INITIAL VOLUME OF
6 EXTINGUISHMENT CREDITS BY THE APPLICABLE PERCENTAGE.

7 3. FOR THE PURPOSES OF DETERMINING THE REDUCTION IN THE AMOUNT OF
8 UNUSED CREDITS AS PROVIDED IN PARAGRAPH 2 OF THIS SUBSECTION, THE
9 APPLICABLE PERCENTAGES ARE AS FOLLOWS:

10 (a) FOR CREDITS REMAINING ON THE SIXTH ANNIVERSARY OF THE DATE OF
11 EXTINGUISHMENT, SEVENTY-FIVE PERCENT.

12 (b) FOR CREDITS REMAINING ON THE ELEVENTH ANNIVERSARY OF THE DATE
13 OF EXTINGUISHMENT, FIFTY PERCENT.

14 (c) FOR CREDITS REMAINING ON THE SIXTEENTH ANNIVERSARY OF THE DATE
15 OF EXTINGUISHMENT, TWENTY-FIVE PERCENT.

16 (d) FOR CREDITS REMAINING ON THE TWENTY-FIRST ANNIVERSARY OF THE
17 DATE OF EXTINGUISHMENT, ZERO PERCENT.

18 4. FOR THE PURPOSES OF PARAGRAPH 2 OF THIS SUBSECTION, THE AMOUNT
19 OF EXTINGUISHMENT CREDITS REMAINING UNUSED ON THE ANNIVERSARY OF THE DATE
20 OF EXTINGUISHMENT OF A GRANDFATHERED RIGHT SHALL BE THE INITIAL VOLUME OF
21 EXTINGUISHMENT CREDITS ISSUED FOR THE EXTINGUISHMENT OF THE RIGHT, REDUCED
22 BY BOTH OF THE FOLLOWING:

23 (a) THE AMOUNT OF ANY OF THE EXTINGUISHMENT CREDITS PREVIOUSLY
24 PLEDGED TO A CERTIFICATE OF ASSURED WATER SUPPLY OR DESIGNATION OF ASSURED
25 WATER SUPPLY PURSUANT TO RULES ADOPTED BY THE DIRECTOR AND REPORTED TO THE
26 DEPARTMENT AS HAVING BEEN USED.

27 (b) THE AMOUNT OF ANY PREVIOUS REDUCTIONS MADE TO THE
28 EXTINGUISHMENT CREDITS PURSUANT TO PARAGRAPH 2 OF THIS SUBSECTION.

29 5. THE GROUNDWATER ALLOWANCE FOR A CERTIFICATE OF ASSURED WATER
30 SUPPLY IS AS FOLLOWS:

31 (a) FOR AN APPLICATION FOR A CERTIFICATE FILED BEFORE SEPTEMBER 1,
32 2018, MULTIPLY THE ANNUAL ESTIMATED WATER DEMAND FOR THE PROPOSED
33 SUBDIVISION BY TEN.

34 (b) FOR AN APPLICATION FOR A CERTIFICATE FILED ON OR AFTER
35 SEPTEMBER 1, 2018, MULTIPLY THE ANNUAL ESTIMATED WATER DEMAND FOR THE
36 PROPOSED SUBDIVISION BY ZERO.

37 6. NOT LATER THAN JANUARY 1, 2019, THE DIRECTOR OF WATER RESOURCES
38 SHALL ADOPT RULES TO CALCULATE EXTINGUISHMENT CREDITS IN THE PINAL ACTIVE
39 MANAGEMENT AREA CONSISTENT WITH THIS SECTION. FOR THIS PURPOSE, THE
40 DIRECTOR IS EXEMPT FROM THE RULEMAKING REQUIREMENTS OF TITLE 41,
41 CHAPTER 6, EXCEPT THAT THE DIRECTOR SHALL FILE A NOTICE OF EXEMPT
42 RULEMAKING WITH THE SECRETARY OF STATE WHO SHALL PUBLISH THE RULES IN THE
43 ARIZONA ADMINISTRATIVE REGISTER AND THE ARIZONA ADMINISTRATIVE CODE. THE
44 RULES SHALL HAVE AN IMMEDIATE EFFECTIVE DATE.

1 F. NOTWITHSTANDING ANY OTHER STATUTE OR RULE, IN THE PINAL ACTIVE
2 MANAGEMENT AREA THE DIRECTOR SHALL RECALCULATE THE AMOUNT OF GROUNDWATER
3 AVAILABLE FOR USE IN THE ACTIVE MANAGEMENT AREA FOR PURPOSES OF
4 DETERMINING AN ASSURED WATER SUPPLY.

5 Sec. 14. Title 45, chapter 2, article 5, Arizona Revised Statutes,
6 is amended by adding section 45-465.04, to read:

7 45-465.04. Use of groundwater to water plants in containers
8 as non-irrigation use; right to use groundwater
9 withdrawn pursuant to irrigation grandfathered
10 right to water plants in containers; definition

11 A. THE USE OF GROUNDWATER TO WATER PLANTS IN CONTAINERS ON OR ABOVE
12 THE SURFACE OF THE GROUND IS A NON-IRRIGATION USE IN AN ACTIVE MANAGEMENT
13 AREA.

14 B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, IN AN INITIAL
15 ACTIVE MANAGEMENT AREA, A PERSON WHO HOLDS A CERTIFICATE OF IRRIGATION
16 GRANDFATHERED RIGHT MAY WITHDRAW GROUNDWATER PURSUANT TO THE RIGHT AND USE
17 THE GROUNDWATER TO WATER PLANTS IN CONTAINERS ON OR ABOVE THE SURFACE OF
18 THE CERTIFICATED ACRES IF THE PLANTS ARE GROWN FOR SALE OR HUMAN
19 CONSUMPTION OR FOR USE AS FEED FOR LIVESTOCK, RANGE LIVESTOCK OR POULTRY,
20 AS THOSE TERMS ARE DEFINED IN SECTION 3-1201.

21 C. A PERSON WHO HOLDS A CERTIFICATE OF IRRIGATION GRANDFATHERED
22 RIGHT SHALL SEPARATELY MEASURE WITH A MEASURING DEVICE APPROVED BY THE
23 DIRECTOR PURSUANT TO SECTION 45-604 ANY GROUNDWATER USED FOR WATERING
24 PLANTS IN CONTAINERS ON OR ABOVE THE SURFACE OF THE CERTIFICATED ACRES AND
25 ANY GROUNDWATER USED FOR AN IRRIGATION USE ON THE CERTIFICATED ACRES.

26 D. EXCEPT AS PROVIDED IN SECTION 45-563.02, IF A PERSON USES
27 GROUNDWATER TO WATER PLANTS IN CONTAINERS PURSUANT TO SUBSECTION B OF THIS
28 SECTION, THE TOTAL AMOUNT OF WATER USED BY THE PERSON FOR THAT PURPOSE AND
29 FOR ANY IRRIGATION USES ON THE CERTIFICATED ACRES MAY NOT EXCEED THE
30 AMOUNT ALLOWED BY THE IRRIGATION WATER DUTY FOR THE FARM.

31 E. THE DIRECTOR MAY NOT REGISTER CREDITS TO THE FLEXIBILITY ACCOUNT
32 ESTABLISHED PURSUANT TO SECTION 45-467 FOR A FARM IN ANY YEAR IN WHICH THE
33 PERSON WHO HOLDS THE CERTIFICATE OF IRRIGATION GRANDFATHERED RIGHT FOR THE
34 FARM USES GROUNDWATER TO WATER PLANTS IN CONTAINERS ON OR ABOVE THE
35 SURFACE OF THE CERTIFICATED ACRES PURSUANT TO SUBSECTION B OF THIS
36 SECTION.

37 F. ON REQUEST BY THE OWNER OF A CERTIFICATE OF IRRIGATION
38 GRANDFATHERED RIGHT, THE DIRECTOR SHALL SEPARATE THE CERTIFICATE INTO TWO
39 CERTIFICATES, WITH ONE CERTIFICATE FOR THOSE CERTIFICATED ACRES ON WHICH
40 PLANTS IN CONTAINERS ARE WATERED WITH GROUNDWATER PURSUANT TO SUBSECTION B
41 OF THIS SECTION AND ONE CERTIFICATE FOR THOSE CERTIFICATED ACRES ON WHICH
42 GROUNDWATER IS USED FOR AN IRRIGATION USE. IF THE DIRECTOR SEPARATES A
43 CERTIFICATE OF IRRIGATION GRANDFATHERED RIGHT INTO TWO CERTIFICATES
44 PURSUANT TO THIS SUBSECTION, THE CERTIFICATED ACRES ASSOCIATED WITH EACH
45 CERTIFICATE SHALL BE CONSIDERED A SEPARATE FARM FOR PURPOSES OF SUBSECTION

1 E OF THIS SECTION. THE DIRECTOR MAY NOT SEPARATE A CERTIFICATE OF
2 IRRIGATION GRANDFATHERED RIGHT INTO TWO CERTIFICATES PURSUANT TO THIS
3 SUBSECTION IF IT WOULD RESULT IN THE ISSUANCE OF A CERTIFICATE OF
4 IRRIGATION GRANDFATHERED RIGHT WITH LESS THAN TWO CERTIFICATED ACRES.

5 G. FOR THE PURPOSES OF THIS SECTION, "CERTIFICATED ACRES" MEANS THE ACRES
6 DESCRIBED ON THE CERTIFICATE OF IRRIGATION GRANDFATHERED RIGHT.

7 Sec. 15. Section 45-561, Arizona Revised Statutes, is amended to
8 read:

9 45-561. Definitions

10 In this article, unless the context otherwise requires:

11 1. "Aquifer" means a geologic formation that contains sufficient
12 saturated materials to be capable of storing water and transmitting water
13 in usable quantities to a well.

14 2. "Augmentation" means to supplement the water supply of an active
15 management area and may include the importation of water into the active
16 management area, storage of water or storage of water pursuant to chapter
17 3.1 of this title.

18 3. "Incidental recharge" means the percolation of water to an
19 aquifer after the water has been withdrawn, diverted or received for
20 delivery by a municipal provider for use within its service area, except
21 water that is added to an aquifer pursuant to chapter 3.1 of this title.

22 4. "Incidental recharge factor" means the ratio of the amount of
23 incidental recharge attributable to a municipal provider during a calendar
24 year to the amount of water withdrawn, diverted or received for delivery
25 by the municipal provider for use within its service area during the
26 year. The amount of incidental recharge attributable to a municipal
27 provider during a calendar year is the amount of water that is
28 incidentally recharged during the year after it is withdrawn, diverted or
29 received for delivery by the municipal provider for use within its service
30 area.

31 5. "Industrial use" means a non-irrigation use of water not
32 supplied by a city, town or private water company, including animal
33 industry use and expanded animal industry use.

34 6. "Intermediate water duty" means an irrigation water duty, as
35 defined in section 45-402, ~~which~~ THAT is established by the director
36 during a management period to apply for a specific number of years during
37 the management period.

38 7. "Large untreated water provider" means a municipal provider that
39 as of January 1, 1990 was serving untreated water to at least five hundred
40 persons or supplying at least one hundred acre-feet of untreated water
41 during a calendar year.

42 8. "Management period" means a period of years prescribed by
43 sections 45-564, ~~through~~ 45-565, 45-565.01, 45-566, 45-566.01, 45-566.02,
44 45-567, 45-567.01, 45-567.02, 45-568 AND 45-568.03 during which a
45 prescribed management plan applies.

1 9. "Mined groundwater" means the amount of groundwater withdrawn or
2 received by a municipal provider from within an active management area
3 during a calendar year for use in its service area, minus both of the
4 following, as applicable:

5 (a) An amount of water computed by multiplying the amount of water
6 supplied by the municipal provider for use within its service area during
7 the calendar year by the incidental recharge factor established for the
8 municipal provider pursuant to this article.

9 (b) If the municipal provider is a city or town in the Tucson
10 active management area, the amount of groundwater withdrawn by the
11 municipal provider during the calendar year from land owned or leased by
12 the municipal provider to which a type 1 non-irrigation grandfathered
13 right under section 45-463, subsection A is appurtenant, up to the
14 following amount:

15 (i) If the municipal provider has made a request to the director as
16 described in section 45-463, subsection F, the amount of groundwater
17 computed by the director under section 45-463, subsection F, in
18 determining whether to designate or redesignate the municipal provider as
19 having an assured water supply, minus the amount of any groundwater
20 withdrawn by the municipal provider from the land during the period
21 beginning with January 1 of the year in which the request was made and
22 ending on December 31 of the year immediately preceding the calendar year
23 for which the calculation of mined groundwater is being made.

24 (ii) If the municipal provider has not made a request to the
25 director as described in section 45-463, subsection F, the amount of
26 groundwater that the director would have been required to include in
27 determining whether to designate or redesignate the municipal provider as
28 having an assured water supply, as computed under section 45-463,
29 subsection F, if the municipal provider had made a request to the director
30 as described in that subsection on January 1 of the calendar year for
31 which the calculation of mined groundwater is being made.

32 10. "Municipal provider" means a city, town, private water company
33 or irrigation district that supplies water for non-irrigation use.

34 11. "Municipal use" means all non-irrigation uses of water supplied
35 by a city, town, private water company or irrigation district, except for
36 uses of water, other than Colorado river water, released for beneficial
37 use from storage, diversion or distribution facilities to avoid spilling
38 that would otherwise occur due to uncontrolled surface water inflows that
39 exceed facility capacity.

40 12. "Safe-yield" means a groundwater management goal ~~which~~ THAT
41 attempts to achieve and thereafter maintain a long-term balance between
42 the annual amount of groundwater withdrawn in an active management area
43 and the annual amount of natural and artificial recharge in the active
44 management area.

1 13. "Small municipal provider" means a municipal provider that
2 supplies two hundred fifty acre-feet or less of water for non-irrigation
3 use during a calendar year. For THE purposes of this paragraph, the
4 amount of untreated water that is supplied by a large untreated water
5 provider during a year shall not be counted in determining whether the
6 municipal provider supplied two hundred fifty acre-feet or less of water
7 for non-irrigation use.

8 14. "Untreated water" means water that is not treated to improve
9 its quality and that is supplied by a municipal provider through a
10 distribution system other than a potable water distribution system.

11 Sec. 16. Section 45-563, Arizona Revised Statutes, is amended to
12 read:

13 45-563. Management plans in active management areas;
14 management periods; general provisions

15 A. The director shall develop a management plan for each initial
16 active management area for each of ~~five~~ SIX management periods pursuant to
17 the guidelines prescribed in sections 45-564, ~~through~~ 45-565, 45-565.01,
18 45-566, 45-566.01, 45-566.02, 45-567, 45-567.01, 45-567.02, 45-568,
19 45-568.01, 45-568.02, 45-468.03, 45-568.04 AND 45-568.05 and shall adopt
20 the plans only after public hearings held pursuant to sections 45-570 and
21 45-571. The plans shall include a continuing mandatory conservation
22 program for all persons withdrawing, distributing or receiving groundwater
23 designed to achieve reductions in withdrawals of groundwater.

24 B. The director shall develop a management plan for the Santa Cruz
25 active management area for the third, fourth, ~~and~~ fifth AND SIXTH
26 management periods pursuant to the guidelines prescribed in sections
27 45-566, 45-566.01, 45-567, 45-567.01, 45-568, ~~and~~ 45-568.01, 45-568.03,
28 45-568.04 AND 45-568.05 and shall adopt the plans only after public
29 hearings held pursuant to sections 45-570 and 45-571. The plans shall
30 include a continuing mandatory conservation program designed to achieve
31 the management goal of the active management area for all persons
32 withdrawing water, other than stored water, from a well and all persons
33 distributing or receiving water, other than stored water, from a
34 well. The plans shall also include criteria for the location of new wells
35 and replacement wells in new locations consistent with the management goal
36 of the active management area.

37 Sec. 17. Section 45-563.02, Arizona Revised Statutes, is amended to
38 read:

39 45-563.02. Exemption from irrigation water duties; small
40 irrigation grandfathered rights; criteria;
41 conservation requirement; exception

42 A. A person who is entitled to use groundwater pursuant to an
43 irrigation grandfathered right is exempt from any irrigation water duties
44 or intermediate water duties established for the farm to which the right

1 is appurtenant under sections 45-564, 45-565, 45-566, 45-567, ~~and~~ 45-568
2 ~~AND 45-568.03~~ if both of the following apply:

- 3 1. There are ten or fewer irrigation acres in the farm.
 - 4 2. The farm is not part of an integrated farming operation.
- 5 B. The director shall not establish irrigation water duties or
6 intermediate water duties under section 45-566, 45-567, ~~or~~ 45-568 ~~OR~~
7 ~~45-568.03~~ for a farm to which both of the following apply:

- 8 1. There are ten or fewer irrigation acres in the farm.
- 9 2. The farm is not part of an integrated farming operation.

10 C. Except as provided in subsection D of this section, a person who
11 is exempt from the irrigation water duties established for a farm pursuant
12 to subsection A of this section or who owns or uses groundwater on a farm
13 for which irrigation water duties are prohibited in subsection B of this
14 section shall not allow any groundwater to flow off the surface of the
15 farm's irrigation acres unless the groundwater is used for a reasonable
16 and beneficial use approved in writing by the director.

17 D. A person who is required under subsection C of this section to
18 prevent groundwater from flowing off the surface of a farm's irrigation
19 acres may apply to the director for an exemption from the
20 requirement. The director may grant the exemption if the person
21 demonstrates to the satisfaction of the director that one of the following
22 applies:

- 23 1. Preventing groundwater from flowing off the surface of the
24 farm's irrigation acres would not be economically feasible.
- 25 2. Any groundwater that will flow off the surface of the farm's
26 irrigation acres will be used by a person with an exempt well in lieu of
27 groundwater that otherwise would have been withdrawn from that well.

28 Sec. 18. Section 45-568, Arizona Revised Statutes, is amended to
29 read:

30 ~~45-568.~~ Management plan for fifth management period;
31 guidelines

32 A. For the fifth management period, 2020 to 2025, the director
33 shall ~~promulgate~~ ~~ADOPT~~ a management plan for each initial active
34 management area not later than January 1, 2019 pursuant to the guidelines
35 prescribed in section 45-567, subsections A and B, except that:

36 1. The director shall establish the historic annual net natural
37 recharge for any groundwater replenishment district in the active
38 management area, computed by determining the net natural recharge, as
39 defined by section 48-4401, for the groundwater basin beneath the district
40 during calendar years 1988 through 2017 and dividing the result by thirty.

41 2. The director may adjust the highest twenty-five ~~per cent~~ ~~PERCENT~~
42 of the irrigation water duties established within an area of similar
43 farming conditions pursuant to section 45-567 by reducing each water duty
44 in an amount up to five ~~per cent~~ ~~PERCENT~~, except that in making the

1 adjustment, no water duty may be reduced to an amount less than the
2 greater of the following:

3 (a) The highest water duty within the lowest seventy-five ~~per cent~~
4 PERCENT of the water duties computed within the area of similar farming
5 conditions for the fifth management period.

6 (b) A water duty computed for the farm unit under this paragraph
7 using an irrigation efficiency of eighty ~~per cent~~ PERCENT.

8 3. A person who is entitled to use groundwater pursuant to an
9 irrigation grandfathered right may apply to the director at any time
10 during the management period for an exemption from the irrigation water
11 duties established pursuant to this section. The director shall grant the
12 exemption if the person demonstrates to the director's satisfaction that
13 granting the exemption is consistent with achieving the management goal of
14 the active management area and that one of the following applies:

15 (a) Withdrawal of groundwater pursuant to the irrigation
16 grandfathered right during the management period will intercept
17 groundwater that would otherwise flow out of and be lost to the active
18 management area in the next fifteen years without entering another active
19 management area.

20 (b) Withdrawal of groundwater pursuant to the irrigation
21 grandfathered right during the management period will prevent encroachment
22 of a rising depth to groundwater level that will cause waterlogging
23 problems within the next fifteen years.

24 B. Within thirty days after the management plan for the fifth
25 management period is adopted, the director shall give written notice in
26 the manner and to the persons prescribed in section 45-565, subsection B
27 and shall give written notice of the non-per capita conservation program
28 established pursuant to section 45-568.01 to all municipal providers. Two
29 years before the compliance date specified in the management plan for any
30 irrigation water duty, intermediate water duty, conservation requirement
31 or intermediate conservation requirement, the director shall give
32 additional written notice by first class mail to the last known addresses
33 of the persons prescribed in section 45-565, subsection B and this
34 subsection.

35 C. Except for a person who OBTAINS A VARIANCE UNDER SECTION 45-574
36 OR WHO is exempt from irrigation water duties under section 45-563.02,
37 subsection A, all persons notified pursuant to subsection B of this
38 section shall comply with the applicable irrigation water duty or
39 conservation requirements for the fifth management period not later than
40 January 1, 2025 and shall remain in compliance until ~~the legislature~~
41 ~~determines otherwise~~ THE APPLICABLE COMPLIANCE DATE ESTABLISHED IN THE
42 MANAGEMENT PLAN FOR THE SIXTH MANAGEMENT PERIOD. IF INTERMEDIATE WATER
43 DUTIES OR INTERMEDIATE CONSERVATION REQUIREMENTS HAVE BEEN ESTABLISHED, A
44 PERSON TO WHOM THOSE WATER DUTIES OR CONSERVATION REQUIREMENTS APPLY SHALL
45 COMPLY WITH THE INTERMEDIATE WATER DUTIES OR INTERMEDIATE CONSERVATION

1 REQUIREMENTS NOT LATER THAN THE COMPLIANCE DATE SPECIFIED IN THE
2 MANAGEMENT PLAN, UNLESS THE PERSON OBTAINS A VARIANCE PURSUANT TO SECTION
3 45-574 OR IS EXEMPT FROM INTERMEDIATE WATER DUTIES UNDER SECTION
4 45-563.02, SUBSECTION A. A PERSON WHO OBTAINS A VARIANCE UNDER SECTION
5 45-574 SHALL COMPLY WITH THE APPLICABLE IRRIGATION WATER DUTY OR
6 CONSERVATION REQUIREMENTS BY THE DATE SPECIFIED IN THE VARIANCE AND SHALL
7 REMAIN IN COMPLIANCE UNTIL THE SUBSEQUENT COMPLIANCE DATE FOR ANY
8 APPLICABLE IRRIGATION WATER DUTY OR CONSERVATION REQUIREMENTS ESTABLISHED
9 IN THE MANAGEMENT PLAN FOR THE FIFTH MANAGEMENT PERIOD.

10 Sec. 19. Title 45, chapter 2, article 9, Arizona Revised Statutes,
11 is amended by adding sections 45-568.03, 45-568.04 and 45-568.05, to read:

12 45-568.03. Management plan for sixth management period;
13 guidelines

14 A. FOR THE SIXTH MANAGEMENT PERIOD, 2025 TO 2035, THE DIRECTOR
15 SHALL ADOPT A MANAGEMENT PLAN FOR EACH INITIAL ACTIVE MANAGEMENT AREA NOT
16 LATER THAN JANUARY 1, 2023 PURSUANT TO THE GUIDELINES PRESCRIBED IN
17 SECTION 45-567, SUBSECTIONS A AND B AND SECTIONS 45-568.04 AND 45-568.05,
18 EXCEPT THAT:

19 1. THE DIRECTOR SHALL ESTABLISH THE HISTORIC ANNUAL NET NATURAL
20 RECHARGE FOR ANY GROUNDWATER REPLENISHMENT DISTRICT IN THE ACTIVE
21 MANAGEMENT AREA, COMPUTED BY DETERMINING THE NET NATURAL RECHARGE, AS
22 DEFINED BY SECTION 48-4401, FOR THE GROUNDWATER BASIN BENEATH THE DISTRICT
23 DURING THE MOST RECENT THIRTY-YEAR PERIOD OF RECORD AND DIVIDING THE
24 RESULT BY THIRTY.

25 2. THE DIRECTOR MAY ADJUST THE HIGHEST TWENTY-FIVE PERCENT OF THE
26 IRRIGATION WATER DUTIES ESTABLISHED WITHIN AN AREA OF SIMILAR FARMING
27 CONDITIONS PURSUANT TO SECTION 45-567 BY REDUCING EACH WATER DUTY IN AN
28 AMOUNT UP TO FIVE PERCENT, EXCEPT THAT IN MAKING THE ADJUSTMENT, NO WATER
29 DUTY MAY BE REDUCED TO AN AMOUNT LESS THAN THE GREATER OF THE FOLLOWING:

30 (a) THE HIGHEST WATER DUTY WITHIN THE LOWEST SEVENTY-FIVE PERCENT
31 OF THE WATER DUTIES COMPUTED WITHIN THE AREA OF SIMILAR FARMING CONDITIONS
32 FOR THE SIXTH MANAGEMENT PERIOD.

33 (b) A WATER DUTY COMPUTED FOR THE FARM UNIT UNDER THIS PARAGRAPH
34 USING AN IRRIGATION EFFICIENCY OF EIGHTY PERCENT.

35 3. A PERSON WHO IS ENTITLED TO USE GROUNDWATER PURSUANT TO AN
36 IRRIGATION GRANDFATHERED RIGHT MAY APPLY TO THE DIRECTOR AT ANY TIME
37 DURING THE MANAGEMENT PERIOD FOR AN EXEMPTION FROM THE IRRIGATION WATER
38 DUTIES ESTABLISHED PURSUANT TO THIS SECTION. THE DIRECTOR SHALL GRANT THE
39 EXEMPTION IF THE PERSON DEMONSTRATES TO THE DIRECTOR'S SATISFACTION THAT
40 GRANTING THE EXEMPTION IS CONSISTENT WITH ACHIEVING THE MANAGEMENT GOAL OF
41 THE ACTIVE MANAGEMENT AREA AND THAT ONE OF THE FOLLOWING APPLIES:

42 (a) WITHDRAWAL OF GROUNDWATER PURSUANT TO THE IRRIGATION
43 GRANDFATHERED RIGHT DURING THE MANAGEMENT PERIOD WILL INTERCEPT
44 GROUNDWATER THAT WOULD OTHERWISE FLOW OUT OF AND BE LOST TO THE ACTIVE

1 MANAGEMENT AREA IN THE NEXT FIFTEEN YEARS WITHOUT ENTERING ANOTHER ACTIVE
2 MANAGEMENT AREA.

3 (b) WITHDRAWAL OF GROUNDWATER PURSUANT TO THE IRRIGATION
4 GRANDFATHERED RIGHT DURING THE MANAGEMENT PERIOD WILL PREVENT ENCROACHMENT
5 OF A RISING DEPTH TO GROUNDWATER LEVEL THAT WILL CAUSE WATERLOGGING
6 PROBLEMS WITHIN THE NEXT FIFTEEN YEARS.

7 B. WITHIN THIRTY DAYS AFTER THE MANAGEMENT PLAN FOR THE SIXTH
8 MANAGEMENT PERIOD IS ADOPTED, THE DIRECTOR SHALL GIVE WRITTEN NOTICE IN
9 THE MANNER AND TO THE PERSONS PRESCRIBED IN SECTION 45-565, SUBSECTION B
10 AND SHALL GIVE WRITTEN NOTICE OF THE NON-PER CAPITA CONSERVATION PROGRAM
11 ESTABLISHED PURSUANT TO SECTION 45-568.04 TO ALL MUNICIPAL PROVIDERS. TWO
12 YEARS BEFORE THE COMPLIANCE DATE SPECIFIED IN THE MANAGEMENT PLAN FOR ANY
13 IRRIGATION WATER DUTY, INTERMEDIATE WATER DUTY, CONSERVATION REQUIREMENT
14 OR INTERMEDIATE CONSERVATION REQUIREMENT, THE DIRECTOR SHALL GIVE
15 ADDITIONAL WRITTEN NOTICE BY FIRST CLASS MAIL TO THE LAST KNOWN ADDRESSES
16 OF THE PERSONS PRESCRIBED IN SECTION 45-565, SUBSECTION B AND THIS
17 SUBSECTION.

18 C. EXCEPT FOR A PERSON WHO OBTAINS A VARIANCE UNDER SECTION 45-574
19 OR WHO IS EXEMPT FROM IRRIGATION WATER DUTIES UNDER SECTION 45-563.02,
20 SUBSECTION A, ALL PERSONS NOTIFIED PURSUANT TO SUBSECTION B OF THIS
21 SECTION SHALL COMPLY WITH THE APPLICABLE IRRIGATION WATER DUTY OR
22 CONSERVATION REQUIREMENTS FOR THE SIXTH MANAGEMENT PERIOD NOT LATER THAN
23 JANUARY 1, 2035 AND SHALL REMAIN IN COMPLIANCE UNTIL THE LEGISLATURE
24 OTHERWISE REQUIRES. IF INTERMEDIATE WATER DUTIES OR INTERMEDIATE
25 CONSERVATION REQUIREMENTS HAVE BEEN ESTABLISHED, A PERSON TO WHOM THOSE
26 WATER DUTIES OR CONSERVATION REQUIREMENTS APPLY SHALL COMPLY WITH THE
27 INTERMEDIATE WATER DUTIES OR INTERMEDIATE CONSERVATION REQUIREMENTS NOT
28 LATER THAN THE COMPLIANCE DATE SPECIFIED IN THE MANAGEMENT PLAN, UNLESS
29 THE PERSON OBTAINS A VARIANCE PURSUANT TO SECTION 45-574 OR IS EXEMPT FROM
30 INTERMEDIATE WATER DUTIES UNDER SECTION 45-563.02, SUBSECTION A. A PERSON
31 WHO OBTAINS A VARIANCE UNDER SECTION 45-574 SHALL COMPLY WITH THE
32 APPLICABLE IRRIGATION WATER DUTY OR CONSERVATION REQUIREMENTS BY THE DATE
33 SPECIFIED IN THE VARIANCE AND SHALL REMAIN IN COMPLIANCE UNTIL THE
34 SUBSEQUENT COMPLIANCE DATE FOR ANY APPLICABLE IRRIGATION WATER DUTY OR
35 CONSERVATION REQUIREMENTS ESTABLISHED IN THE MANAGEMENT PLAN FOR THE SIXTH
36 MANAGEMENT PERIOD OR UNTIL THE LEGISLATURE OTHERWISE PROVIDES.

37 45-568.04. Non-per capita conservation program for municipal
38 providers; sixth management period

39 A. IN ADDITION TO THE PROVISIONS OF THE MANAGEMENT PLAN FOR THE
40 SIXTH MANAGEMENT PERIOD PRESCRIBED BY SECTION 45-568.03, THE DIRECTOR
41 SHALL INCLUDE IN THE MANAGEMENT PLANS A NON-PER CAPITA CONSERVATION
42 PROGRAM FOR MUNICIPAL PROVIDERS. THE PROGRAM SHALL REQUIRE A MUNICIPAL
43 PROVIDER REGULATED UNDER THE PROGRAM TO IMPLEMENT ONE OR MORE WATER
44 CONSERVATION MEASURES IN ITS SERVICE AREA FROM THE LIST ADOPTED BY THE
45 DIRECTOR PURSUANT TO SUBSECTION B OF THIS SECTION, SUBJECT TO APPROVAL BY

1 THE DIRECTOR PURSUANT TO SUBSECTION F OR G OF THIS SECTION. THE PROGRAM
2 MAY PRESCRIBE THE NUMBER OF CONSERVATION MEASURES THAT A PROVIDER MUST
3 IMPLEMENT UNDER THIS SUBSECTION BASED ON THE NUMBER OF SERVICE CONNECTIONS
4 IN THE PROVIDER'S SERVICE AREA.

5 B. THE DIRECTOR SHALL INCLUDE IN THE NON-PER CAPITA CONSERVATION
6 PROGRAM A LIST AND DESCRIPTION OF CONSERVATION MEASURES THAT MUNICIPAL
7 PROVIDERS REGULATED UNDER THE PROGRAM MUST SELECT FROM TO COMPLY WITH THE
8 REQUIREMENTS ADOPTED PURSUANT TO SUBSECTION A OF THIS SECTION, WHICH MAY
9 INCLUDE THE CONSERVATION MEASURES DESCRIBED IN SECTION 45-567.01,
10 SUBSECTION A, PARAGRAPHS 1 AND 2.

11 C. IN ADDITION TO THE REQUIREMENTS PRESCRIBED IN SUBSECTION A OF
12 THIS SECTION, A MUNICIPAL PROVIDER REGULATED UNDER THE NON-PER CAPITA
13 CONSERVATION PROGRAM SHALL:

14 1. INCLUDE IN ITS ANNUAL REPORT FILED PURSUANT TO SECTION 45-632 A
15 COPY OF THE PROVIDER'S CURRENT WATER RATE STRUCTURE UNLESS NO CHANGES HAVE
16 BEEN MADE TO THE RATE STRUCTURE SINCE IT WAS LAST SUBMITTED TO THE
17 DIRECTOR. A MUNICIPAL PROVIDER REGULATED UNDER THE NON-PER CAPITA
18 CONSERVATION PROGRAM IS ENCOURAGED TO ADOPT A WATER RATE STRUCTURE THAT
19 PROMOTES EFFICIENT USE OF WATER, SUBJECT TO APPROVAL BY THE CORPORATION
20 COMMISSION IF THE PROVIDER IS A PUBLIC SERVICE CORPORATION.

21 2. FOR AT LEAST FIVE YEARS AFTER A YEAR IN WHICH THE MUNICIPAL
22 PROVIDER IS REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM, KEEP
23 AND MAINTAIN ACCURATE RECORDS VERIFYING THAT THE MUNICIPAL PROVIDER
24 IMPLEMENTED THE CONSERVATION MEASURES REQUIRED BY THE NON-PER CAPITA
25 CONSERVATION PROGRAM DURING THAT YEAR.

26 D. THE DIRECTOR SHALL DESIGN THE NON-PER CAPITA CONSERVATION
27 PROGRAM TO ACHIEVE WATER USE EFFICIENCY IN THE SERVICE AREAS OF MUNICIPAL
28 PROVIDERS REGULATED UNDER THE PROGRAM EQUIVALENT TO THE WATER USE
29 EFFICIENCY ASSUMED BY THE DIRECTOR IN ESTABLISHING THE PER CAPITA
30 CONSERVATION REQUIREMENTS FOR THE MANAGEMENT PLAN PURSUANT TO SECTION
31 45-568.03.

32 E. EXCEPT AS PROVIDED IN SUBSECTIONS I, J AND K OF THIS SECTION, ON
33 OR BEFORE THE DATE SPECIFIED IN THE MANAGEMENT PLAN, A MUNICIPAL PROVIDER
34 NOTIFIED OF THE NON-PER CAPITA CONSERVATION PROGRAM PURSUANT TO SECTION
35 45-568.03, SUBSECTION B, SHALL SUBMIT TO THE DIRECTOR, ON A FORM
36 PRESCRIBED BY THE DIRECTOR, A PROVIDER PROFILE THAT CONTAINS THE FOLLOWING
37 INFORMATION:

38 1. A DESCRIPTION OF THE MUNICIPAL PROVIDER'S EXISTING SERVICE AREA
39 CHARACTERISTICS AND WATER USE PATTERNS.

40 2. A DESCRIPTION OF THE CONSERVATION MEASURES THE MUNICIPAL
41 PROVIDER IS CURRENTLY IMPLEMENTING AND ANY ADDITIONAL CONSERVATION
42 MEASURES THAT THE PROVIDER INTENDS TO IMPLEMENT TO COMPLY WITH THE NON-PER
43 CAPITA CONSERVATION PROGRAM.

1 3. AN EXPLANATION OF HOW EACH CONSERVATION MEASURE DESCRIBED IN THE
2 PROVIDER PROFILE IS RELEVANT TO THE MUNICIPAL PROVIDER'S EXISTING SERVICE
3 AREA CHARACTERISTICS OR WATER USE PATTERNS.

4 F. WITHIN NINETY DAYS AFTER RECEIVING A MUNICIPAL PROVIDER'S
5 PROVIDER PROFILE UNDER SUBSECTION E OF THIS SECTION, THE DIRECTOR SHALL
6 APPROVE OR DISAPPROVE THE PROVIDER PROFILE AND SEND WRITTEN NOTICE OF THE
7 DECISION TO THE MUNICIPAL PROVIDER. THE DIRECTOR SHALL APPROVE THE
8 PROVIDER PROFILE IF THE DIRECTOR DETERMINES THAT THE PROFILE CONTAINS
9 INFORMATION DEMONSTRATING THAT THE MUNICIPAL PROVIDER WILL IMPLEMENT AT
10 LEAST THE MINIMUM NUMBER OF CONSERVATION MEASURES REQUIRED BY THE NON-PER
11 CAPITA CONSERVATION PROGRAM AND THAT THE CONSERVATION MEASURES ARE
12 REASONABLY RELEVANT TO THE MUNICIPAL PROVIDER'S EXISTING SERVICE AREA
13 CHARACTERISTICS OR WATER USE PATTERNS. IF THE DIRECTOR DISAPPROVES THE
14 PROVIDER PROFILE, THE DIRECTOR SHALL INCLUDE WITH THE WRITTEN NOTICE OF
15 THE DECISION THE REASONS FOR THE DISAPPROVAL. A DECISION OF THE DIRECTOR
16 DISAPPROVING A PROVIDER PROFILE IS AN APPEALABLE AGENCY ACTION PURSUANT TO
17 TITLE 41, CHAPTER 6, ARTICLE 10. IF THE DIRECTOR FAILS TO SEND THE
18 MUNICIPAL PROVIDER WRITTEN NOTICE APPROVING OR DISAPPROVING THE PROVIDER
19 PROFILE WITHIN NINETY DAYS AFTER RECEIVING THE PROVIDER PROFILE, THE
20 PROVIDER PROFILE SHALL BE DEEMED APPROVED.

21 G. IF THE DIRECTOR DISAPPROVES A MUNICIPAL PROVIDER'S PROVIDER
22 PROFILE PURSUANT TO SUBSECTION F OF THIS SECTION, WITHIN NINETY DAYS AFTER
23 THE DATE OF THE DIRECTOR'S WRITTEN NOTICE DISAPPROVING THE PROVIDER
24 PROFILE, OR WITHIN NINETY DAYS AFTER THE DIRECTOR'S DECISION IS FINAL IF
25 THE MUNICIPAL PROVIDER FILES A TIMELY NOTICE OF APPEAL OF THE DECISION
26 PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10, THE MUNICIPAL PROVIDER SHALL
27 REVISE THE PROVIDER PROFILE TO CORRECT THE DEFICIENCIES IDENTIFIED BY THE
28 DIRECTOR IN THE WRITTEN NOTICE AND SUBMIT THE REVISED PROVIDER PROFILE TO
29 THE DIRECTOR. WITHIN NINETY DAYS AFTER RECEIVING A MUNICIPAL PROVIDER'S
30 REVISED PROVIDER PROFILE PURSUANT TO THIS SUBSECTION, THE DIRECTOR SHALL
31 APPROVE OR DISAPPROVE THE REVISED PROVIDER PROFILE PURSUANT TO SUBSECTION
32 F OF THIS SECTION. IF THE DIRECTOR DISAPPROVES THE REVISED PROVIDER
33 PROFILE:

34 1. THE DECISION IS AN APPEALABLE AGENCY ACTION PURSUANT TO TITLE
35 41, CHAPTER 6, ARTICLE 10.

36 2. THE MUNICIPAL PROVIDER IS IN VIOLATION OF THIS SECTION BEGINNING
37 ON THE DATE THE DIRECTOR'S DECISION IS FINAL UNTIL THE MUNICIPAL PROVIDER
38 SUBMITS A PROVIDER PROFILE THAT IS APPROVED BY THE DIRECTOR, EXCEPT THAT
39 THE PROVIDER MAY NOT BE IN VIOLATION BEFORE THE COMPLIANCE DATE FOR THE
40 NON-PER CAPITA CONSERVATION PROGRAM SPECIFIED IN THE MANAGEMENT PLAN.

41 H. EXCEPT AS PROVIDED IN SUBSECTIONS I, J AND K OF THIS SECTION, A
42 MUNICIPAL PROVIDER NOTIFIED OF THE NON-PER CAPITA CONSERVATION PROGRAM
43 PURSUANT TO SECTION 45-568.03, SUBSECTION B OR SECTION 45-571.01,
44 SUBSECTION B SHALL BE REGULATED UNDER THE PROGRAM BEGINNING ON THE DATE
45 THE DIRECTOR APPROVES THE MUNICIPAL PROVIDER'S PROVIDER PROFILE PURSUANT

1 TO SUBSECTION F OR G OF THIS SECTION, BUT NOT EARLIER THAN THE COMPLIANCE
2 DATE SPECIFIED IN THE MANAGEMENT PLAN. A MUNICIPAL PROVIDER REGULATED
3 UNDER THE NON-PER CAPITA CONSERVATION PROGRAM SHALL COMPLY WITH THE
4 PROGRAM BEGINNING ON THE DATE THE PROVIDER IS FIRST REGULATED UNDER THE
5 PROGRAM.

6 I. A MUNICIPAL PROVIDER DESIGNATED AS HAVING AN ASSURED WATER
7 SUPPLY PURSUANT TO SECTION 45-576 MAY NOT BE REGULATED UNDER THE NON-PER
8 CAPITA CONSERVATION PROGRAM, BUT INSTEAD SHALL BE REGULATED UNDER THE PER
9 CAPITA CONSERVATION PROGRAM ESTABLISHED BY THE DIRECTOR IN THE APPLICABLE
10 MANAGEMENT PLAN, UNLESS BOTH OF THE FOLLOWING APPLY:

11 1. THE MUNICIPAL PROVIDER NOTIFIES THE DIRECTOR IN WRITING THAT IT
12 ELECTS TO BE REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM AND
13 INCLUDES WITH THE NOTICE A PROVIDER PROFILE THAT CONTAINS THE INFORMATION
14 PRESCRIBED BY SUBSECTION E OF THIS SECTION.

15 2. THE DIRECTOR APPROVES THE MUNICIPAL PROVIDER'S PROVIDER PROFILE
16 PURSUANT TO SUBSECTION F OF THIS SECTION OR A REVISED PROVIDER PROFILE
17 PURSUANT TO SUBSECTION G OF THIS SECTION. THE MUNICIPAL PROVIDER SHALL BE
18 REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM BEGINNING ON THE
19 DATE THE DIRECTOR APPROVES THE PROVIDER PROFILE OR A REVISED PROVIDER
20 PROFILE.

21 J. A LARGE UNTREATED WATER PROVIDER MAY NOT BE REGULATED UNDER THE
22 NON-PER CAPITA CONSERVATION PROGRAM WITH RESPECT TO ITS DELIVERIES OF
23 UNTREATED WATER. A LARGE UNTREATED WATER PROVIDER SHALL COMPLY WITH ANY
24 CONSERVATION OR RATE OF USE REQUIREMENTS ESTABLISHED FOR DELIVERIES OF
25 UNTREATED WATER BY LARGE UNTREATED WATER PROVIDERS IN THE APPLICABLE
26 MANAGEMENT PLAN WITH RESPECT TO ITS DELIVERIES OF UNTREATED WATER.

27 K. A SMALL MUNICIPAL PROVIDER MAY NOT BE REGULATED UNDER THE
28 NON-PER CAPITA CONSERVATION PROGRAM, BUT INSTEAD SHALL COMPLY WITH ANY
29 CONSERVATION REQUIREMENTS ESTABLISHED FOR SMALL MUNICIPAL PROVIDERS IN THE
30 APPLICABLE PLAN.

31 L. A MUNICIPAL PROVIDER THAT IS REGULATED UNDER THE NON-PER CAPITA
32 CONSERVATION PROGRAM ESTABLISHED IN A MANAGEMENT PLAN UNDER THIS SECTION
33 SHALL COMPLY WITH ANY INDIVIDUAL USER REQUIREMENTS PRESCRIBED IN THE
34 MANAGEMENT PLAN, EXCEPT AS PROVIDED IN SECTION 45-571.02.

35 M. A MUNICIPAL PROVIDER THAT IS REGULATED UNDER THE NON-PER CAPITA
36 CONSERVATION PROGRAM ESTABLISHED IN A MANAGEMENT PLAN UNDER THIS SECTION
37 IS EXEMPT FROM THE PER CAPITA CONSERVATION REQUIREMENTS PRESCRIBED IN THE
38 MANAGEMENT PLAN.

39 45-568.05. Alternative conservation programs for agriculture;
40 sixth management period

41 A. IN ADDITION TO THE PROVISIONS OF THE MANAGEMENT PLAN FOR THE
42 SIXTH MANAGEMENT PERIOD PRESCRIBED BY SECTION 45-568.03, THE DIRECTOR
43 SHALL INCLUDE IN THE MANAGEMENT PLAN THE HISTORIC CROPPING PROGRAM
44 PRESCRIBED BY THIS SECTION AS AN ALTERNATIVE AGRICULTURAL CONSERVATION
45 PROGRAM THAT ACHIEVES CONSERVATION EQUIVALENT TO THE AGRICULTURAL

1 CONSERVATION PROGRAM INCLUDED IN THE MANAGEMENT PLAN PURSUANT TO SECTION
2 45-568.03.

3 B. THE DIRECTOR SHALL ESTABLISH THE COMPONENTS OF THE HISTORIC
4 CROPPING PROGRAM IN THE MANAGEMENT PLAN FOR THE SIXTH MANAGEMENT PERIODS
5 TO ASSURE THAT CONSERVATION EQUIVALENT TO THAT REQUIRED BY THE
6 AGRICULTURAL CONSERVATION PROGRAM ESTABLISHED IN THE MANAGEMENT PLAN
7 PURSUANT TO SECTION 45-568.03 WILL BE ACHIEVED. IN ADDITION TO THE PROGRAM
8 COMPONENTS ESTABLISHED BY THE DIRECTOR, THE HISTORIC CROPPING PROGRAM
9 SHALL INCLUDE THE FOLLOWING PROVISIONS:

10 1. THE DIRECTOR SHALL CALCULATE THE MAXIMUM ANNUAL GROUNDWATER
11 ALLOTMENT AS PROVIDED IN SECTION 45-465.

12 2. THE DIRECTOR SHALL CALCULATE THE IRRIGATION WATER DUTY IN THE
13 SAME MANNER AS THAT REQUIRED BY SECTION 45-568.03, SUBSECTION A, USING AN
14 IRRIGATION EFFICIENCY OF SEVENTY-FIVE PERCENT. IN AREAS DEEMED BY THE
15 DIRECTOR TO HAVE LIMITING SOILS, THE DIRECTOR MAY USE AN IRRIGATION
16 EFFICIENCY OF SEVENTY PERCENT FOR THE WATER DUTY CALCULATION.

17 3. THE FLEXIBILITY ACCOUNT PROVISIONS OF SECTION 45-467 APPLY EXCEPT
18 AS OTHERWISE PROVIDED IN THIS SECTION.

19 4. THE DIRECTOR MAY NOT REGISTER CREDITS TO THE FLEXIBILITY ACCOUNT
20 ESTABLISHED UNDER SECTION 45-467 THAT CAUSE THE CREDIT BALANCE TO EXCEED
21 SEVENTY-FIVE PERCENT OF THE MAXIMUM ANNUAL GROUNDWATER ALLOTMENT
22 ESTABLISHED PURSUANT TO THIS SUBSECTION.

23 5. ONLY OWNERS OF AN IRRIGATION GRANDFATHERED RIGHT MAY APPLY FOR
24 PARTICIPATION IN THE HISTORIC CROPPING PROGRAM.

25 C. IN THE MANAGEMENT PLANS, THE DIRECTOR SHALL ESTABLISH CRITERIA
26 THAT THE APPLICANT SHALL SATISFY TO ENTER THE HISTORIC CROPPING PROGRAM TO
27 ASSURE THAT CONSERVATION EQUIVALENT TO THAT REQUIRED BY THE AGRICULTURAL
28 CONSERVATION PROGRAM ESTABLISHED IN THE MANAGEMENT PLAN PURSUANT TO
29 SECTION 45-568.03 WILL BE ACHIEVED. AN OWNER OF AN IRRIGATION
30 GRANDFATHERED RIGHT MAY APPLY TO PARTICIPATE IN THE HISTORIC CROPPING
31 PROGRAM BY FILING AN APPLICATION WITH THE DIRECTOR. THE DIRECTOR MAY NOT
32 APPROVE AN APPLICATION FOR THE HISTORIC CROPPING PROGRAM UNLESS THE
33 APPLICANT SATISFIES THE ENTRANCE CRITERIA ESTABLISHED BY THE DIRECTOR AND
34 THE FOLLOWING CONDITIONS ARE SATISFIED:

35 1. THE APPLICANT'S ACCUMULATION OF CREDITS IN THE APPLICANT'S
36 FLEXIBILITY ACCOUNT UNDER SECTION 45-467 IS EQUAL TO OR LESS THAN
37 SEVENTY-FIVE PERCENT OF THE FARM'S MAXIMUM ANNUAL GROUNDWATER ALLOTMENT
38 ESTABLISHED PURSUANT TO THE APPLICABLE MANAGEMENT PLAN UNDER SECTION
39 45-568.03, SUBSECTION A, SECTION 45-568.04, SUBSECTION A OR SECTION
40 45-568.05, SUBSECTION A. TO SATISFY THIS REQUIREMENT, THE APPLICANT MAY
41 EITHER SELL OR CONVEY ANY EXCESS CREDITS AS PROVIDED BY SECTION 45-467, OR
42 THE APPLICANT MAY RELINQUISH ANY EXCESS CREDITS.

43 2. THE APPLICANT'S ACCUMULATION OF DEBITS IN THE APPLICANT'S
44 FLEXIBILITY ACCOUNT UNDER SECTION 45-467 IS EQUAL TO OR LESS THAN
45 TWENTY-FIVE PERCENT OF THE FARM'S MAXIMUM ANNUAL GROUNDWATER ALLOTMENT

1 ESTABLISHED PURSUANT TO THE MANAGEMENT PLAN UNDER SECTION 45-568.03,
2 SUBSECTION A.

3 D. IN THE MANAGEMENT PLAN, THE DIRECTOR SHALL ESTABLISH PERFORMANCE
4 STANDARDS THAT THE OWNER OF AN IRRIGATION GRANDFATHERED RIGHT OR ANY
5 PERSON USING GROUNDWATER PURSUANT TO THAT RIGHT SHALL SATISFY WHILE
6 PARTICIPATING IN THE HISTORIC CROPPING PROGRAM TO ASSURE THAT CONSERVATION
7 EQUIVALENT TO THAT REQUIRED BY THE AGRICULTURAL CONSERVATION PROGRAM
8 INCLUDED IN THE MANAGEMENT PLAN PURSUANT TO SECTION 45-568.03, SUBSECTION
9 A WILL BE ACHIEVED. AFTER AN OWNER OF AN IRRIGATION GRANDFATHERED RIGHT
10 HAS BEEN APPROVED FOR PARTICIPATION IN THE HISTORIC CROPPING PROGRAM, THE
11 OWNER OF THAT RIGHT, AND ANY PERSON USING GROUNDWATER PURSUANT TO THAT
12 RIGHT, SHALL MEET BOTH OF THE FOLLOWING CONDITIONS:

13 1. COMPLY WITH THE PERFORMANCE STANDARDS ESTABLISHED BY THE
14 DIRECTOR.

15 2. NOT ACCUMULATE DEBITS TO THE FLEXIBILITY ACCOUNT ESTABLISHED
16 UNDER SECTION 45-467 THAT EXCEED TWENTY-FIVE PERCENT OF THE MAXIMUM ANNUAL
17 GROUNDWATER ALLOTMENT ESTABLISHED UNDER SUBSECTION B OF THIS SECTION. THE
18 OWNER OF THE IRRIGATION GRANDFATHERED RIGHT AND ANY PERSON ENTITLED TO USE
19 GROUNDWATER PURSUANT TO THAT RIGHT VIOLATE THIS SECTION IF THE DEBIT
20 BALANCE EXCEEDS THE AMOUNT STATED IN THIS PARAGRAPH.

21 E. NOTWITHSTANDING SECTION 45-467, AN OWNER OF AN IRRIGATION
22 GRANDFATHERED RIGHT, WHILE PARTICIPATING IN THE HISTORIC CROPPING PROGRAM,
23 MAY NOT CONVEY OR SELL FLEXIBILITY ACCOUNT CREDITS FROM, OR PURCHASE
24 FLEXIBILITY ACCOUNT CREDITS FOR, THE FLEXIBILITY ACCOUNT REGULATED BY THE
25 HISTORIC CROPPING PROGRAM.

26 F. THE DIRECTOR MAY INCLUDE IN THE ADOPTION OF, OR A MODIFICATION
27 TO, THE MANAGEMENT PLAN FOR THE SIXTH MANAGEMENT PERIOD ADDITIONAL
28 ALTERNATIVE AGRICULTURAL CONSERVATION PROGRAMS THAT THE DIRECTOR
29 DETERMINES ACHIEVE CONSERVATION THAT IS AT LEAST EQUIVALENT TO THAT
30 REQUIRED UNDER THE AGRICULTURAL CONSERVATION PROGRAM INCLUDED IN THE
31 MANAGEMENT PLAN PURSUANT TO SECTION 45-568.03, INCLUDING A CROPPED ACREAGE
32 PROGRAM IN WHICH THE MAXIMUM ANNUAL GROUNDWATER ALLOTMENT IS DETERMINED
33 BASED ON THE CROPS GROWN DURING THE CALENDAR YEAR IN WHICH THE IRRIGATION
34 EFFICIENCY IS APPLIED.

35 G. THE DIRECTOR SHALL INCLUDE IN THE ADOPTION OF THE MANAGEMENT
36 PLAN FOR THE SIXTH MANAGEMENT PERIOD A BEST MANAGEMENT PRACTICES PROGRAM
37 THAT REQUIRES THE OWNER OF AN IRRIGATION GRANDFATHERED RIGHT AND ANY
38 PERSON USING GROUNDWATER PURSUANT TO THE RIGHT TO IMPLEMENT SPECIFIC
39 AGRICULTURAL CONSERVATION PRACTICES FOR WATER USE ON THE LAND OR FARM UNIT
40 TO WHICH THE RIGHT IS APPURTENANT IN LIEU OF COMPLYING WITH AN IRRIGATION
41 WATER DUTY AND A MAXIMUM ANNUAL GROUNDWATER ALLOTMENT. THE PROGRAM SHALL
42 BE DESIGNED TO ACHIEVE CONSERVATION THAT IS AT LEAST EQUIVALENT TO THAT
43 REQUIRED BY THE AGRICULTURAL CONSERVATION PROGRAM INCLUDED IN THE
44 MANAGEMENT PLAN PURSUANT TO SECTION 45-568.03.

1 Sec. 20. Section 45-574, Arizona Revised Statutes, is amended to
2 read:

3 45-574. Variances; application; notice; hearing; issuance

4 A. A person who requires additional time to comply with an
5 irrigation water duty or conservation requirement established pursuant to
6 section 45-565, 45-566, 45-566.01, 45-567, 45-567.01, 45-568, ~~or~~
7 45-568.01, 45-568.03 OR 45-568.04 may apply to the director for a variance
8 from the water duty or requirement within ninety days from the date of
9 notice of the water duty or requirement. The application shall include the
10 following:

- 11 1. The name and mailing address of the applicant.
- 12 2. The name of the active management area in which the use is
13 located.
- 14 3. The amount of groundwater currently being withdrawn annually by
15 the person.
- 16 4. The irrigation water duty or conservation requirement from which
17 the variance is sought.
- 18 5. A general description of the economic circumstances preventing
19 timely compliance with the irrigation water duty or conservation
20 requirement and any information relevant to such circumstances.
- 21 6. The sworn statement that the information contained in the
22 application is true and correct to the best belief and knowledge of the
23 applicant.

24 7. Such other information as the director may require.

25 B. The director shall give written notice to the applicant of the
26 opportunity for an administrative hearing. An administrative hearing
27 shall be held before the director's decision on the application if the
28 director deems a hearing necessary or a hearing is requested by the
29 applicant.

30 C. The director may grant a variance ~~upon~~ ON a showing of
31 compelling economic circumstances. The variance shall specify:

- 32 1. The amount of groundwater ~~which~~ THAT may be withdrawn by the
33 person during the variance period, or a schedule of intermediate water
34 duties or conservation requirements to be reached at specified intervals
35 during the variance period.
- 36 2. The duration of the variance, which may not exceed five years
37 from the date of the director's final determination of the variance.

38 D. A party aggrieved by the director's decision may seek judicial
39 review of the final decision of the director as provided in section
40 45-114, subsection B in the superior court in the county in which the
41 irrigated land or non-irrigation use is located.

42 E. Section 45-114, subsections A and B govern administrative
43 proceedings, rehearing or review and judicial review of final decisions of
44 the director under this section. If an administrative hearing is held, it

1 shall be conducted in the active management area in which the use is
2 located.

3 Sec. 21. Section 45-575, Arizona Revised Statutes, is amended to
4 read:

5 45-575. Administrative review of irrigation water duty and
6 conservation requirements

7 A. Any aggrieved party may request an administrative review of an
8 irrigation water duty or conservation requirement established pursuant to
9 section 45-565, 45-566, 45-566.01, 45-567, 45-567.01, 45-568, ~~or~~
10 45-568.01, 45-568.03 OR 45-568.04. Except as provided in subsection B of
11 this section, the request must be made not later than ninety days from the
12 date of notice of such duty or requirement given thirty days after the
13 adoption of the management plan or if the notice was given pursuant to
14 section 45-566.01, subsection E or 45-571.02, subsection B, not later than
15 ninety days from the date of the notice.

16 B. An aggrieved person who claims that extraordinary circumstances
17 not in existence as of the date of notice that was given thirty days after
18 adoption of the management plan justify modification of an irrigation
19 water duty or conservation requirement established pursuant to section
20 45-565, 45-566, 45-566.01, 45-567, 45-567.01, 45-568, ~~or~~ 45-568.01,
21 45-568.03 OR 45-568.04 may request administrative review of the water duty
22 or conservation requirement more than ninety days from the date of notice
23 of the water duty or conservation requirement. The director may modify
24 the water duty or conservation requirement if the aggrieved person
25 demonstrates to the director by clear and convincing evidence that
26 extraordinary circumstances not in existence as of the date of the notice
27 that was given thirty days after adoption of the management plan make it
28 unreasonable to require compliance with a water duty or conservation
29 requirement.

30 C. The director shall give written notice to the aggrieved party
31 who is requesting an administrative review of the opportunity for an
32 administrative hearing. An administrative hearing shall be held before
33 the director's decision on the application if the director deems a hearing
34 necessary or a hearing is requested by the applicant.

35 D. A party aggrieved by the director's decision may seek judicial
36 review of the final decision of the director as provided in section
37 45-114, subsection B in the superior court in the county in which the
38 irrigated land or the non-irrigation use is located.

39 E. Section 45-114, subsections A and B govern administrative
40 proceedings, rehearing or review and judicial review of final decisions of
41 the director under this section. If an administrative hearing is held, it
42 shall be conducted in the active management area in which the use is
43 located.

1 Sec. 22. Section 45-2103, Arizona Revised Statutes, is amended to
2 read:

3 45-2103. Arizona water protection fund commission

4 A. The Arizona water protection fund commission is established and
5 consists of ~~two~~ THREE ex officio members, two advisory members and nine
6 appointed members who are residents of this state, who have demonstrated
7 an interest in natural resources and who are appointed as follows:

8 1. One person who represents a multi-county water conservation
9 district established pursuant to title 48, chapter 22 and named by that
10 district's governing board.

11 2. One person who represents a state association of natural
12 resource conservation districts and who is appointed by the governor.

13 3. Four persons who represent natural resource conservation
14 districts established pursuant to title 37, chapter 6, and who represent
15 geographically diverse areas of this state, two of whom shall be appointed
16 by the president of the senate and two of whom are appointed by the
17 speaker of the house of representatives.

18 4. One member of the public who has at least a bachelor's degree in
19 hydrology, who represents a city that is served by the central Arizona
20 project and who is appointed by the governor.

21 5. One person who is knowledgeable in natural resource conservation
22 issues or in water resource issues related to riparian ecosystems, who
23 represents an agricultural improvement district established pursuant to
24 title 48, chapter 17 and who is appointed by the governor.

25 6. One person who represents an Indian tribe and who is appointed
26 by the chairman of the ~~intertribal~~ INTER TRIBAL council of Arizona.

27 7. As nonvoting ex officio members, the director of the department
28 of water resources, THE STATE FORESTER and the state land commissioner.

29 8. As nonvoting advisory members, one member of the house of
30 representatives who is appointed by the speaker of the house of
31 representatives and one member of the senate who is appointed by the
32 president of the senate. Advisory members may not be considered for
33 purposes of establishing a quorum.

34 B. Members of the commission appointed pursuant to subsection A,
35 paragraphs 1 through 6 of this section shall be appointed for staggered
36 terms of three years. A member may serve more than one term and may
37 continue to serve beyond the expiration of the term until a successor is
38 appointed and assumes office.

39 C. On request, members who are not ex officio members of the
40 commission are eligible to receive compensation pursuant to section
41 38-611, not to exceed three thousand dollars in any calendar year, and are
42 eligible for reimbursement for expenses pursuant to title 38, chapter 4,
43 article 2.

44 D. Members of the commission are immune from liability for any
45 action necessary to carry out the purposes of this chapter.

1 Sec. 23. Section 45-2106, Arizona Revised Statutes, is amended to
2 read:

3 45-2106. Public involvement

4 A. The commission is subject to ~~the provisions of~~ title 38, chapter
5 3, article 3.1 and title 39, chapter 1.

6 B. The commission shall develop and may amend the guidelines for
7 applicants required by section 45-2105 after reviewing the recommendations
8 submitted by the natural resource conservation districts developed
9 pursuant to section 37-1054, subsections D and E and the information
10 gathered during the public involvement process.

11 C. The commission shall gather information from the following:

12 1. The director of the department of water resources, **THE STATE**
13 **FORESTER** and the state land commissioner.

14 2. The federal and state fish, wildlife, recreation and natural
15 resource agencies.

16 3. County and municipal entities.

17 4. The public.

18 D. The commission shall develop procedures to ~~assure~~ **ENSURE**
19 adequate public participation. At a minimum, public participation
20 procedures shall prescribe public notice requirements including the
21 content and publication of the notice, provide an opportunity for public
22 hearings and specify the procedures governing the hearings and require the
23 public availability of relevant documents. Public hearings shall be held
24 at places and times ~~which~~ **THAT** afford a reasonable opportunity to persons
25 to participate.

26 E. The commission shall make available for viewing copies of the
27 recommendations and supporting documents submitted pursuant to this
28 section and may charge a reasonable fee for copying.

29 Sec. 24. Section 45-2113, Arizona Revised Statutes, is amended to
30 read:

31 45-2113. Fund grants; applications

32 A. The commission shall grant monies from the fund consistent with
33 the application guidelines developed pursuant to section 45-2105. The
34 commission shall establish a procedure by which monies may be granted
35 annually ~~which shall include~~ **THAT INCLUDES** a maximum of six months between
36 the receipt of the proposal by the commission and the disbursement of
37 monies. The commission shall give priority in funding to the following:

38 1. Projects for which matching monies or assets of comparable
39 value, including in-kind contributions, will be provided by other sources.

40 2. Projects that provide for the continued maintenance of the
41 portion of the river and stream and associated riparian habitat that are
42 enhanced by the project.

43 3. Projects that include ~~broad based~~ **BROAD-BASED** local involvement.

44 4. Projects that directly benefit perennial or intermittent rivers
45 or streams or that otherwise increase the supply of water.

1 B. The commission shall require as a condition of approval of any
2 proposal all of the following provisions:

3 1. Allowing access for inspection and evaluation of the project.

4 2. Controlling the expenditure of and accounting for any monies
5 granted by the commission

6 3. Requiring that those persons responsible for the project submit
7 all pertinent information and research gained from the project to the
8 commission.

9 4. Requiring that any person receiving a grant spend no more than
10 five percent of the grant on costs of administration.

11 C. The commission shall provide for public involvement regarding
12 the applications submitted to the commission, which shall include notice
13 to any person who requests notice of applications and which shall provide
14 a reasonable opportunity for comment on the application ~~which shall~~ THAT
15 IS not ~~be~~ less than forty-five days.

16 D. On receipt of an application the commission shall notify cities,
17 towns, counties, natural resource conservation districts, special
18 districts and Indian communities affected by the proposal and shall
19 provide a reasonable opportunity for comment on the application ~~which~~
20 ~~shall~~ THAT IS not ~~be~~ less than forty-five days.

21 E. Any person, state agency or political subdivision of this state
22 may submit a request for funding from the fund for purposes prescribed by
23 this section. A federal agency is not eligible for funding from the fund.
24 Requests for funding shall be made to the commission. Requests for
25 funding submitted to the commission may be accompanied by expressions of
26 support from affected cities, towns, counties, natural resource
27 conservation districts, special districts or Indian communities.

28 F. As a condition of approval by the commission, the applicant
29 shall commit to work jointly with the affected cities, towns, counties,
30 natural resource conservation districts, special districts and Indian
31 communities that have contacted the commission pursuant to subsection D of
32 this section on all aspects of the proposal's implementation and
33 monitoring, unless the jurisdiction chooses not to participate.

34 G. Monies in the fund may only be spent to finance programs located
35 in this state.

36 H. Monies in the fund may be spent for any of the following:

37 1. Granting monies to entities for the acquisition of central
38 Arizona project water or effluent that will protect or restore rivers or
39 streams consistent with state water law. ~~No~~ AN entity may NOT exercise
40 the right of eminent domain to acquire water or water rights using monies
41 derived from this fund.

42 2. Granting monies to assist in developing, promoting and
43 implementing water conservation programs, ~~THAT ARE~~ THAT ARE directly related to
44 the purposes of this chapter, ~~outside of the active management areas.~~

1 3. Granting monies in support of research and data collection,
2 compilation and analysis THAT ARE directly related to the purposes of this
3 chapter, except that no more than five percent of the monies deposited in
4 the fund in any fiscal year may be spent for this purpose. Before the
5 approval of any such project, the commission shall consult with the
6 department of water resources, THE ARIZONA DEPARTMENT OF FORESTRY AND FIRE
7 MANAGEMENT and the state land department to determine whether any research
8 of a similar nature has been or is in the process of being performed and
9 is already available. The commission shall not approve a proposal if
10 either department determines that sufficient data exists and notifies the
11 commission in writing.

12 4. Granting monies for the development and implementation of
13 capital projects or specific measures consistent with the purposes of this
14 chapter.

15 I. Monies in the fund may not be spent for:

16 1. Any project that includes the planting of mesquite, tamarisk or
17 other nonnative high water usage trees that consume water to a degree that
18 is detrimental to water conservation efforts, but may be used for removal
19 of mesquite, tamarisk or other nonnative high water usage trees that
20 consume water to a degree that is detrimental to water conservation
21 efforts.

22 2. Any remedial action purposes undertaken pursuant to the
23 comprehensive environmental response, compensation, and liability act of
24 1980, as amended (P.L. 96-510; 94 Stat. 2767; 42 United States Code
25 section 9601) or title 49, chapter 2, article 5.

26 Sec. 25. Section 48-3702, Arizona Revised Statutes, is amended to
27 read:

28 48-3702. District as municipal corporation; immunity

29 A. A multi-county water conservation district is a tax-levying
30 public improvement district of the state and a municipal corporation to
31 the extent of the powers and privileges conferred by this chapter or
32 granted generally to municipal corporations by the constitution and
33 statutes of the state, including the immunities and exemptions provided by
34 article ~~18~~ XIII, section 7, of the Constitution of Arizona.

35 B. A MULTI-COUNTY WATER CONSERVATION DISTRICT SHALL NOT ASSERT THE
36 DEFENSE OF IMMUNITY UNDER THE ELEVENTH AMENDMENT OF THE UNITED STATES
37 CONSTITUTION IN LITIGATION BROUGHT BY A WATER USER TO ENFORCE THE TERMS OF
38 A CENTRAL ARIZONA PROJECT WATER DELIVERY CONTRACT OR SUBCONTRACT.

39 Sec. 26. Title 48, chapter 22, article 1, Arizona Revised Statutes,
40 is amended by adding section 48-3713.04, to read:

41 48-3713.04. District, department communication; interstate,
42 federal issues; notice

43 A. IF THE DISTRICT IS A PARTY TO DISCUSSIONS ON OR NEGOTIATIONS OF
44 INTERSTATE AGREEMENTS OR AGREEMENTS WITH THE UNITED STATES INVOLVING THE

1 USE, STORAGE OR CONSERVATION OF COLORADO RIVER WATER, THE DISTRICT SHALL
2 PROMPTLY INFORM THE DIRECTOR OF WATER RESOURCES.

3 B. IF THE DIRECTOR OF WATER RESOURCES IS A PARTY TO DISCUSSIONS ON
4 OR NEGOTIATIONS OF INTERSTATE AGREEMENTS OR AGREEMENTS WITH THE UNITED
5 STATES INVOLVING THE USE, STORAGE OR CONSERVATION OF COLORADO RIVER WATER,
6 THE DIRECTOR OF WATER RESOURCES SHALL PROMPTLY INFORM THE DISTRICT.

7 Sec. 27. Evaluation of conservation requirements and
8 irrigation water duties for fifth and sixth
9 management periods; advisory committee; report;
10 delayed repeal

11 A. The director of water resources shall evaluate the conservation
12 requirements and irrigation water duties required to be established in the
13 management plans for the fifth and sixth management periods pursuant to
14 section 45-568, Arizona Revised Statutes, as amended by this act, and
15 sections 45-568.03, 45-568.04 and 45-568.05, Arizona Revised Statutes, as
16 added by this act, to determine whether any changes to those conservation
17 requirements and irrigation water duties are appropriate to achieve
18 reasonable conservation in the active management areas.

19 B. The director shall establish one or more advisory committees for
20 each active management area to assist the director in the evaluation
21 required by subsection A of this section. The director may also contract
22 with an independent researcher to assist in the evaluation. The
23 evaluation shall include a review of the conservation requirements and
24 irrigation water duties established in the management plans for the fifth
25 management period for each active management area to determine whether
26 those conservation requirements should continue for the management plans
27 for the fifth and sixth management periods, or whether changes are
28 appropriate.

29 C. The director shall prepare a report of the director's findings
30 and recommendations and submit the report on or before December 31, 2030
31 to the governor, the president of the senate, the speaker of the house of
32 representatives, the members of the senate natural resources, energy and
33 water committee, or its successor committee, and the members of the house
34 of representatives energy, environment and natural resources committee, or
35 its successor committee. The report shall include any recommendations for
36 statutory changes.

37 D. This section is repealed from and after September 30, 2031.

38 Sec. 28. Conforming legislation

39 The legislative council staff shall prepare proposed legislation
40 conforming the Arizona Revised Statutes to the provisions of this act for
41 consideration in the fifty-fourth legislature, first regular session.

1 Sec. 29. Transfer; effect; succession; natural resource
2 conservation districts; Arizona department of
3 forestry and fire management

4 A. All matters, including contracts, orders and judicial or
5 quasi-judicial actions, whether completed or pending, of the state land
6 department relating to natural resource conservation districts are
7 transferred, on the date prescribed by section 30 of this act, and
8 maintain the same status with the Arizona department of forestry and fire
9 management.

10 B. Rules adopted by the state land department relating to natural
11 resource conservation districts are effective until superseded by rules
12 adopted by the Arizona department of forestry and fire management.

13 C. All personnel, property and records, all data and investigative
14 findings, all obligations and all appropriated monies remaining unspent
15 and unencumbered of the state land department relating to natural resource
16 conservation districts are transferred to the Arizona department of
17 forestry and fire management and may be used for the purposes of this act.

18 Sec. 30. Retroactivity

19 Sections 37-1002, 37-1011, 37-1012, 37-1013, 37-1014, 37-1036,
20 37-1054, 37-1302, 45-2103, 45-2106 and 45-2113, Arizona Revised Statutes,
21 as amended by this act, apply retroactively to from and after June 30,
22 2018.